

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART 2

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Indictment No.:
6615/2012
(Trial)

6 ATARA WISDOM,

7 Defendant.

8 -----X

9 Supreme Courthouse
320 Jay Street
Brooklyn, New York 11201
July 8, 2014

10 B E F O R E:

11 THE HONORABLE ALBERT TOMEI, JUSTICE
12 (And a Jury)

13 A P P E A R A N C E S:

14 HON. KENNETH P. THOMPSON, ESQ.
District Attorney - Kings County
15 350 Jay Street
Brooklyn, New York 11201
16 BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

17
18 DAVID WALENSKY, ESQ.
Attorney for Defendant
19 910 Stuart Avenue
Mamaroneck, New York
20 BY: DAVID WALENSKY, ESQ.
- and -
21 JOSHUA POVILL, ESQ.

22
23
24 MARLIN CASSIDY
25 Senior Court Reporter

Proceeding

1 (Whereupon, the following took place in open
2 court:)

3 THE COURT: Do you have your witness?

4 MS. CHU: I have one witness.

5 THE COURT: Come on up.

6 (Whereupon, a sidebar conference was held off
7 the record.)

8 THE COURT: Bring the jury out.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the Jury entered the courtroom.)

11 THE CLERK: All the jurors are present and
12 seated.

13 Do both sides waive the roll call?

14 MS. CHU: So waived.

15 MR. WALENSKY: Yes.

16 THE CLERK: Thank you.

17 THE COURT: Ladies and gentlemen, sorry for
18 the delay, but the Court did have other business to
19 attend to, so please accept the apology of the Court for
20 the delay. I know how frustrating it can be while
21 sitting in the jury room.

22 So, we will proceed.

23 Call your next witness.

24 MS. CHU: The People call Sarah Phillips.

25 (Whereupon, there was a brief pause in the

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1 proceedings.)

2 COURT OFFICER: Witness entering.

3 (Whereupon, Sarah Phillips entered the
4 courtroom and took the witness stand.)

5 THE CLERK: Raise your right hand.

6 Do you solemnly swear or affirm the testimony
7 you're about to give will be the truth, the whole truth
8 and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Put your hand down, please.

11 State your name for the record.

12 THE WITNESS: My name is Sarah Phillips.

13 THE CLERK: Spell your first name.

14 THE WITNESS: S-A-R-A-H.

15 THE CLERK: Spell your last name.

16 THE WITNESS: P-H-I-L-L-I-P-S.

17 THE CLERK: P-H-I-L...

18 THE WITNESS: L-I-P-S.

19 THE CLERK: Thank you.

20 THE COURT: All right, proceed.

21 MS. CHU: Thank you.

22 S A R A H P H I L L I P S, called as a witness by and
23 on behalf of the People of the State of New York,
24 after having been first duly sworn, was examined
25 and testified as follows:

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1 DIRECT EXAMINATION

2 BY MS. CHU:

3 Q Good morning, Ms. Phillips.

4 A Good morning.

5 Q By whom are you employed?

6 A I'm employed at the Office of the Chief Medical
7 Examiner in the Department of Forensic Biology.

8 Q Can you tell the members of the jury, what is your
9 title?

10 A I am a criminalist level four.

11 Q Can you describe your duties and responsibilities
12 as a criminalist?

13 A As a criminalist level four I'm responsible for
14 examining physical evidence for biological fluids such as
15 blood, semen or saliva, I supervise lower level criminalists
16 in their duties, I write reports which reflect my findings,
17 and I testify in court as necessary.

18 Q What is your educational background?

19 A I have a bachelor's degree in genetics and
20 microbiology from Rutgers University and a Master's in
21 forensic sciences from Pace University.

22 Q How many years have you working in the ME's office?

23 A Since September 2005.

24 Q Now, did you have any training that -- I'm sorry.
25 Did you have any training after your educational

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1 training?

2 A After being hired at the office I underwent a
3 six-month training program that was intense and I had to
4 observe a trained analyst perform a task. I was then given
5 practice samples and my supervisor had to review my results,
6 and if I passed, I was then given competency samples which
7 the results were only known to the training group. Once I
8 was reviewed on those results, I could then perform that task
9 in casework. I also had to undergo an oral exam and go
10 through mock court training.

11 Q Now, what is forensic science?

12 A Forensic science is the application of natural
13 sciences, such as chemistry or biology, to matters of law.

14 Q What is forensic biology?

15 A Forensic biology is a subset of forensic science in
16 which you use biological techniques to first identify a
17 stain, such as blood, semen or saliva, then attempt to give a
18 source or individualize the stain.

19 Q Is the lab that you work at at the Medical
20 Examiner's Office accredited?

21 A Yes.

22 Q What does that mean, that your office is
23 accredited?

24 A Accreditation means outside inspectors come into
25 our laboratory and make sure we meet or exceed standards set

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1 in areas such as operations, personnel and safety. We're
2 accredited by both the American Society for Lab Directors
3 Laboratory Accreditation Board and New York State.

4 Q Can you tell me, are you a member of any
5 professional organization?

6 A Yes. I'm an associate member in the American
7 Academy of Forensic Sciences.

8 Q Now, how many tests have you conducted using DNA?

9 A Thousands.

10 Q And how many cases have you worked on?

11 A Hundreds.

12 Q Have you ever testified in courts of law?

13 A Yes.

14 Q And have you been qualified as expert in the field
15 of forensic biology?

16 A Yes.

17 Q How many times have you testified so?

18 A I testified approximately 40 times.

19 Q In what jurisdictions have you testified?

20 A I've testified in grand juries and Supreme courts
21 in all five boroughs of New York City.

22 Q Have you ever been denied qualification as an
23 expert?

24 A No.

25 MS. CHU: At this time, your Honor, I would

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1 offer Ms. Phillips as expert in the field of forensic
2 biology.

3 THE COURT: Any objection?

4 MR. WALENSKY: No.

5 THE COURT: Deemed an expert in that field.
6 Proceed.

7 MS. CHU: Thank you.

8 Q Ms. Phillips, can you explain to the members of the
9 jury, what is DNA?

10 A DNA stands for deoxyribonucleic acid. We get half
11 of our DNA from our mother and half our DNA from our father.
12 So, it's the hereditary material of life.

13 About 99 percent of DNA is the same between
14 individuals, that is why we all have two eyes, a nose and a
15 mouth; about one percent is different, and this percent we
16 look at in the laboratory in order to individualize stains
17 and people.

18 Q Now, can you tell me, where can you find DNA in
19 someone's body?

20 A You can find DNA in most cells of the body, so
21 you'll find it in white blood cells, skin cells and sperm
22 cells.

23 Q Now, are you familiar with what a locus is?

24 A Yes.

25 A locus is a specific location on the DNA that we

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1 test for. So, for our testing we look at 15 locations on the
2 DNA plus a sex determining gene.

3 Q Now, are you also familiar with what an allele is?

4 A Yes. At the specific locations we test for, our
5 testing is length based, so we are looking at the number of
6 times a specific DNA unit will repeat over and over again,
7 and it's assigned a number. So, the alleles represent the
8 different numbers that you can have at the specific
9 locations.

10 Q Now, how do you go about getting a profile?

11 A So a DNA profile is generated when we undergo four
12 steps of DNA testing, and the first step is called
13 extraction. So using a series of heat and chemicals we are
14 able to release DNA into a solution, then we do quantitation
15 to determine, number one, if DNA is present, and number two,
16 how much DNA is present because that is necessary for the
17 next step, called amplification, where we make multiple
18 copies of the specific locations we test for in the
19 laboratory. And after a sample has been amplified, it's then
20 run through a DNA detection instrument, we will generate a
21 DNA profile and an analyst will review the results for its
22 accuracy, then as custodian of the case file I would also be
23 responsible for reviewing the DNA results and making
24 interpretations.

25 Q Now, I want to direct your attention to this case.

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1 As part of your duties and responsibilities at the
2 ME's office Forensic Biology Department did you receive
3 evidence in connection with a deceased person by the name
4 Anthony Wilson?

5 A Yes.

6 Q Can you tell me, what did you receive?

7 THE WITNESS: Your Honor, may I refer to my
8 notes?

9 THE COURT: You may.

10 THE WITNESS: Thank you.

11 A On January the 6th, 2012, we received postmortem
12 items from Anthony Wilson that included a blood sample, a
13 piece of bone, and a sexual assault kit that contained swabs
14 taken from various orifices of the body, and hair samples.

15 Q Now, can you tell me, was this case assigned a
16 specific number for the Forensic Biology Department?

17 A Yes, it was.

18 Q What was the number?

19 A It was assigned FB, which stands for forensic
20 biology, 12, for the year 2012, 00046.

21 Q Was there a corresponding FB number assigned to
22 this case?

23 A That is FB12 dash 00046.

24 Q Okay.

25 Now, can you tell me, did you prepare -- I'm sorry.

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1 Do you have to prepare reports in connection with
2 your testing?

3 A Yes.

4 MS. CHU: At this time, your Honor, I would
5 offer this into evidence as People's 50...I think we are
6 up to 57, certified copies of the DNA case file.

7 MR. WALENSKY: No objection.

8 MS. CHU: Collectively.

9 THE COURT: Deemed in evidence. I mean, it is
10 in evidence.

11 (Whereupon, the DNA case file was marked as
12 People's Exhibit 57 in evidence.)

13 Q Was there also a suspect file that was added to the
14 case?

15 A Yes.

16 Q Was there an FB number assigned?

17 A That was assigned FBS 13 dash 00571.

18 Q You mentioned you got various pieces of evidence.
19 What was the first thing you did when you got the evidence?

20 A The evidence was brought to our laboratory and
21 stored with our Evidence Unit in a locked storage facility
22 until it was signed in and ready for examination.

23 When I went to go examine the items of evidence, I
24 took them from the Evidence Unit and documented the packaging
25 that the items were received in sealed, I made sure that the

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1 documentation on the bags matched up with the voucher numbers
2 assigned by the N.Y.P.D., and then I began my examination and
3 made notes.

4 Q Did you also receive samples that were taken from
5 the scene by Detective Markoski?

6 A I'm referring to a voucher in my case file which is
7 3000018795, which contained samples taken from around the
8 apartment, and according to the paperwork Stephen Markoski
9 did collect them.

10 Q Okay.

11 Now, you had mentioned you had gotten items from
12 Anthony Wilson upon his autopsy?

13 A Correct.

14 Q Did you receive any other evidence to test?

15 A We also received a voucher Z004877 on January 31st,
16 2012, which contained samples that were taken from two
17 bottles.

18 Q Two prescription bottles?

19 A Yes. It's listed as Seroquel or Fluoxetine.

20 Q Now, can you tell me, were all the items that were
21 contained on the vouchers actually in the items that you had
22 that were sealed?

23 A Yes.

24 Q What did you do with these items once you received
25 them?

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1 A The blood sample from Anthony Wilson underwent the
2 four steps of DNA testing that I previously described in
3 order to generate a known DNA profile for him. As for the
4 samples that were taken from either the two bottles or from
5 around the apartment, they were visually examined to see if
6 there was any possible blood on them, and in order to do that
7 you would do a visual examination to see if there's any
8 reddish brown staining. If a sample had reddish brown
9 staining, it then undergoes our screening test for possible
10 blood, so a small cutting is taken from the swabs that were
11 used to collect the samples and it's put into a test tube,
12 then one colorless liquid is added, I make sure there is --
13 no color change occurs, then a second colorless liquid is
14 added, and if I note a pinkish color change, that means
15 possible blood is present and those samples would then go on
16 to see if we can develop a DNA profile.

17 Q What were the results of your testing that you just
18 mentioned?

19 A So testing indicated the presence of human blood on
20 samples 6.3 from the cap ridges of the Seroquel bottle;
21 sample 6.4 from the exterior of the Seroquel bottle; sample
22 7.2 from the cap ridges of the Fluoxetine bottle; sample 7.3
23 from the exterior of the Fluoxetine bottle; sample SM8 from
24 the nightstand west side of the bed in bedroom; sample SM9
25 from the kitchen cabinet; sample SM10 from inside of tub in

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1 bathroom; sample SM11 from the east bathroom wall.

2 Q Now, -- I'm sorry, go ahead.

3 A Also, for the penile swab that was received from
4 the victim we were able to find semen on, that was done by
5 sending it on for confirmatory tests of P30, which is a
6 protein that's found in very high concentrations in semen, so
7 this sample tested positive for semen.

8 Q What did you do next?

9 A The samples that had indicated human blood was
10 present, they underwent our four steps for DNA testing, so we
11 were able to develop DNA profiles for some of the samples and
12 the penile swab from Anthony Wilson also underwent DNA
13 testing.

14 Q And were you able to obtain a profile from any of
15 these items?

16 A Yes.

17 Q What was that?

18 A On sample 6.4 from the exterior of the Seroquel
19 bottle, sample 7.3 from the cap ridges of the Fluoxetine
20 bottle, sample SM8 from the nightstand west side of bed in
21 bedroom, sample SM9 from the kitchen cabinet, and the sperm
22 cell and epithelial fraction of the penile swab were
23 determined to be from a male individual and this DNA profile
24 would be expected to be found in one in greater than 6.8
25 trillion people. And in order to break that down, our Earth

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1 has a population of approximately 6.8 billion people. So,
2 you would need 1,000 planet Earths, each with a population of
3 6.8 billion people before you'd expect to see this DNA
4 profile again.

5 So, I compared this male DNA profile to the known
6 profile of Anthony Wilson and it was the same, so he's the
7 source of the DNA on those samples that I listed.

8 Q Okay.

9 Now, can you tell me, you had mentioned that the
10 penile swab that was taken from Mr. Wilson upon his autopsy
11 tested positive for sperm?

12 A Correct.

13 Q Or semen, I should say.

14 A That's correct, it tested positive for semen.

15 Q Now, does that finding support a claim of sexual
16 activity before death?

17 MR. WALENSKY: Objection, beyond the scope
18 of --

19 THE COURT: If she can answer, I'll let her.

20 A I can't specifically give a reason as to why semen
21 would be found on the victim's penis, but that is a
22 possibility as to why it could be present.

23 Q Okay.

24 And is it also a possibility -- I'm sorry.

25 Are you familiar with, if someone dies by unnatural

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1 causes, whether or not there would be traces of ejaculate in
2 a man's penis?

3 MR. WALENSKY: Objection. Beyond the scope of
4 the expertise. This is not a medical doctor, it is a
5 forensic biologist testing for DNA.

6 THE COURT: Repeat the question.

7 (Whereupon, the referred-to question was read
8 back by the Reporter.)

9 THE COURT: Can you answer the question?

10 A I have seen that that is possible in the
11 literature, yes.

12 MR. WALENSKY: Objection. It's -- your Honor,
13 can I voir dire?

14 THE COURT: You may.

15 VOIR DIRE

16 BY MR. WALENSKY:

17 Q You are not a medical doctor, correct?

18 A That's correct.

19 Q And you are not trained as a medical examiner,
20 right?

21 A Correct.

22 Q So anything --

23 You don't have expertise in the field of human
24 biology -- withdrawn.

25 You don't have --

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1 You don't have expertise in -- withdrawn.

2 Your expertise is pretty much limited to your
3 testing of DNA samples?

4 A That's correct.

5 Q So anything else is just something you might read
6 without having personal knowledge or expertise, is that
7 correct?

8 A Correct.

9 MR. WALENSKY: All right.

10 I move to strike any answer regarding that.

11 THE COURT: All right, it's stricken, the
12 question and the answer.

13 DIRECT EXAMINATION

14 BY MS. CHU: (Continued)

15 Q Now, can you tell me, what did you do with the
16 other items that you tested?

17 A So on sample 6.3, from the cap ridges of the
18 Seroquel bottle, there was a mixture of DNA present, meaning
19 more than one person contributed their DNA to the sample.
20 And I compared Anthony Wilson's DNA profile to this, the
21 mixture. I could see all of his DNA alleles, so that means
22 he could be a contributor, but the minor contributor or the
23 person that did not -- who donated, I'm sorry, the least
24 amount of DNA, there wasn't enough information there in order
25 for me to make a comparison.

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1 There were two other samples, sample SM10 from the
2 inside of the tub in bathroom, and sample SM11 from the east
3 bathroom wall, that developed a female DNA profile and this
4 was referred to as female donor A.

5 For that specific sample I also did a statistical
6 calculation and you would expect to find this profile in
7 approximately one in greater than 6.8 trillion people. So,
8 again, you would need a thousand planet Earths each with a
9 population of approximately 6.8 billion people before you'd
10 expect to see this DNA profile again.

11 This profile from female donor A was then uploaded
12 into a database called CODIS, which stands for Combined DNA
13 Indexing System, where you can upload samples of forensic
14 unknowns in order to search them against other databases.

15 Q Okay.

16 What were the results when you uploaded it into the
17 CODIS system?

18 A We received notification that there was a match
19 between a known person already in the database and female
20 donor A.

21 Q Okay.

22 Who was that match to?

23 A According to the paperwork that we received from
24 the New York State Division of Criminal Justice Services, the
25 person was listed as Atara Wisdom.

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1 Q Did there come a time when you actually obtained a
2 profile from Atara Wisdom?

3 A Yes.

4 Q And when was that?

5 A We received voucher R490270 on May 9th, 2013 and
6 this contained oral swabs from Atara Wisdom, and a cutting
7 from a swab underwent the steps in order to develop a DNA
8 profile.

9 Q And what were the results of your testing?

10 A When I compared the DNA profile of Atara Wisdom to
11 the DNA profile of female donor A, they were the same.

12 Q They were the same person?

13 A Correct.

14 Q Okay.

15 Now, can you tell me, is there any way to
16 distinguish between menstrual blood and other types of blood
17 that comes from a female's body?

18 A Our types of testing in the lab do not distinguish
19 where the blood comes from.

20 Q Now, can you tell me, you had mentioned the
21 statistics for both the ones that matched Anthony Wilson,
22 which you said something about one in 6.8 trillion is the
23 statistical analysis?

24 A Correct.

25 Q Now, can you tell me, so, in your expert opinion is

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1 the blood and semen that was found in the apartment as well
2 on various items, as well as from the penile swab, that of
3 Anthony Wilson?

4 A Yes. Some of the blood samples and semen samples
5 are from Anthony Wilson.

6 Q And the blood that you found in the bathroom -- I'm
7 sorry -- the swabs that were taken from the bathroom, in your
8 expert opinion, are those samples that are from Atara Wisdom?

9 A Yes.

10 Q Now, could you do anything else with the mixture
11 that you said was the majority donor who was Anthony Wilson?

12 A The minor contributor, again, is not suitable for
13 comparison, so there's nothing further that can be done.

14 MS. CHU: Thank you very much. I have nothing
15 further.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. WALENSKY:

19 Q There was no amylase found on the penile swab, is
20 that correct?

21 A That is correct.

22 Q Now, amylase would indicate a mixing of perhaps
23 saliva or vaginal secretions or bacteria?

24 A That is possible. So, amylase testing in our
25 laboratory is what we use to screen for possible saliva, but

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1 it's just a screening test, it's not confirmatory, so vaginal
2 secretions or bacteria can also give a positive reading for
3 the amylase test.

4 Q And, so, the semen swab was just -- just contained
5 Anthony Wilson's DNA, nothing else?

6 A That's correct, the penile swab.

7 MR. WALENSKY: Thank you.

8 I have no further questions.

9 THE COURT: You may step down. Thank you.

10 THE WITNESS: Thank you.

11 (Whereupon, Sarah Phillips stepped down from
12 the witness stand and exited the courtroom.)

13 THE COURT: All right, ladies and gentlemen,
14 due to circumstances that are beyond the control of this
15 Court, we are going adjourn to 2:00 P.M.

16 Do not discuss the case amongst yourselves or
17 with anyone else. Do not visit the place where the
18 alleged crimes occurred. Have no contact with any
19 parties involved in this matter, including the Court.
20 Again, do not resort to utilizing any digital or
21 electronic devices for the purpose of obtaining any
22 information about this case or contacting anyone about
23 this matter.

24 See you at two o'clock.

25 Thank you very much.

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1 Have a good lunch.

2 Leave your books there.

3 THE CLERK: Remain seated as the jury exits.

4 (Whereupon, the Jury exited the courtroom.)

5 THE COURT: All right, the Court is adjourned
6 till 2:00 P.M.

7 (Whereupon, a lunch recess was held.)

8 * * *

9 A F T E R N O O N S E S S I O N

10 * * *

11 THE CLERK: Come to order, Part 2 is back in
12 session, the Honorable Albert Tomei presiding.

13 THE CLERK: Case back on trial continues.
14 Defendant is present with attorney, all parties are
15 present. Appearances are the same.

16 THE COURT: All right.

17 Get the jury.

18 THE CLERK: Something needs to go on the
19 record, Judge.

20 THE COURT: All right, let's go.

21 Is the case called in?

22 THE CLERK: I called it in.

23 MS. CHU: Your Honor, I just wanted to keep
24 the Court apprised of the status of my final two
25 witnesses.

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1 We had made arrangements for Mr. Shepard to
2 appear today, however he has since been incommunicado
3 with my detective who has his cellphone number. I had
4 given up a material witness order as well as some phone
5 work-up that we'd like for this witness and I ask the
6 Court to allow us till tomorrow to produce our witness.

7 In addition, your Honor, I just wanted to put
8 on the record what we spoke about before lunch, which
9 was that I had asked Mr. Walensky whether or not he'd be
10 willing to stipulate as to the swabbing of certain items
11 that were vouchered from the scene by a person by the
12 name of Amy Dorsey from the Trace Unit. I informed Mr.
13 Walensky as well as the Court that Ms. Dorsey was asked
14 to leave the New York City police lab because there are
15 allegations of either something having to do with
16 transference of DNA, that she was contaminating items
17 that she was actually testing, so I told Mr. Walensky
18 about it and in light of the fact that in this case the
19 swabbing that they did comes back to our victim, it
20 really has no consequence for the defendant, I asked
21 whether or not he'd be willing to stipulate. He
22 indicated that he was.

23 MR. WALENSKY: I do stipulate.

24 THE COURT: Okay.

25 Get the jury.

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1 COURT OFFICER: Jury entering.

2 (Whereupon, the Jury entered the courtroom.)

3 THE COURT: Come on up. Come on up.

4 (Whereupon, a sidebar conference was held off
5 the record.)

6 THE CLERK: Both sides waive the roll call?

7 MS. CHU: Yes.

8 MR. WALENSKY: Yes.

9 THE CLERK: Thank you.

10 THE COURT: All right, ladies and gentlemen,
11 at this time, again because of these unforeseen
12 circumstances, I am going to have to adjourn this matter
13 to 9:30 tomorrow.

14 Tomorrow, I would say, and I'm hedging this,
15 but you never know what is going to happen, but I would
16 think that this matter will be concluded tomorrow. And,
17 therefore, I will just see you tomorrow at 9:30, all
18 right. And bear with the heat and be here on time and
19 maybe we'll finally complete this matter, all right.

20 So, have a good afternoon.

21 Goodnight and see you tomorrow morning.

22 Do not discuss the case amongst yourselves or
23 with anyone else.

24 (Whereupon, the Jury exited the courtroom.)

25 THE COURT: All right.

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1 I know you indicated that you would like to
2 have a charge conference so I think we should at this
3 particular time.

4 Is your client going to testify?

5 MR. WALENSKY: Yes, your Honor. My client, I
6 believe, will be testifying, if she wishes to.

7 I told her the dangers of testifying, that
8 she's not required to testify. I also believe that the
9 statement that we saw is enough for a justification
10 defense. However, all that in mind, she does wish to
11 testify.

12 Is that true, Ms. Wisdom?

13 THE DEFENDANT: Yes.

14 THE COURT: You understand it's your right and
15 your right alone, you need not take your lawyer's advice
16 regarding testifying, but nevertheless, if that is your
17 desire, you have every right to testify in this matter.

18 Is that what you want to do?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you doing so voluntarily and
21 of your own free will?

22 THE DEFENDANT: Yes.

23 THE COURT: All right.

24 What is your application with respect to the
25 charges?

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1 MR. WALENSKY: Your Honor, we would like the
2 charge on justification, the section that's in the Penal
3 Law 35.15 Subsection 2B, which specifically relates that
4 a person is justified to use deadly force for themselves
5 or another if they are in imminent danger of being
6 raped, rape, kidnapping, et cetera.

7 It is that subsection that we wish the use of
8 deadly force to be under as opposed to use of deadly
9 force if you feel you're life is in danger, because all
10 of the evidence in this case specifically, and really
11 the only evidence, is the statement of Ms. Wisdom that
12 she believed she was being raped -- he was attempting to
13 rape her.

14 We have --

15 THE COURT: What else?

16 MR. WALENSKY: Circumstantial evidence charge.

17 THE COURT: I am going to charge
18 circumstantial evidence.

19 MR. WALENSKY: I'm sorry, you will?

20 THE COURT: Yes.

21 MR. WALENSKY: Okay.

22 If Mr. Shepard appears, we want the charge
23 regarding an outcry because it's -- the People are
24 saying it's a third-party admission and we are saying
25 it's not a third-party admission that she did something

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1 wrong. She said the man tried to have sex with me and I
2 poked him.

3 MS. CHU: That's not what she said.

4 THE COURT: What did she say?

5 MS. CHU: The allegation, the witness says
6 that she told him -- she says, I wasn't going to pay him
7 rent and have sex with him, so I poked him.

8 There's a definite difference in meaning.

9 MR. WALENSKY: We do not believe so. But this
10 is only if Mr. Shepard testifies, otherwise there's, at
11 present, no outcry witness.

12 Then the standard charges regarding intent,
13 expert witness.

14 THE COURT: What's this witness's name that
15 you're looking for?

16 MS. CHU: Matthew Shepard.

17 THE COURT: Oh, Shepard.

18 I'm not sure if I'm going to charge outcry.

19 What were the circumstances regarding the
20 admission?

21 MS. CHU: The admission, she had contacted my
22 witness on the night that the 911 call was made and
23 arranged to meet with him. He says he meets with her,
24 she told him she had a situation. He asked her what.
25 She says, I poked him. He says, what do mean? She

Proceeding

1 says, well, I wasn't going to pay him rent and fuck him,
2 so I poked him.

3 MR. WALENSKY: She also asked him to go back
4 to the apartment with her to check on him.

5 MS. CHU: That's only after he asked her how
6 was he when you left. She said, come back and we
7 will -- come back with me and we'll check it out.

8 THE COURT: I'm not sure right now. I will
9 have to research it and -- it's -- it's -- to some
10 extent it's ambiguous, I'm not sure if I should charge
11 it, but I'll see.

12 What else, intent and --

13 MR. WALENSKY: Intent, expert witness. If Ms.
14 Wisdom ultimately changes her mind and does not testify,
15 the standard charge that she has no obligation to
16 testify. Just if she doesn't. She does plan on
17 testifying.

18 MS. CHU: Expanded intent you asked for?

19 MR. WALENSKY: No, the standard intent.

20 It doesn't have to be premeditation, no
21 planning is required.

22 THE COURT: I'll give that.

23 Anything else?

24 I am only going to give one count, that's all.

25 MR. WALENSKY: Murder in the second degree.

Proceeding

1 THE COURT: Murder in the second degree.

2 MR. WALENSKY: I understand.

3 No, I don't perceive any other.

4 THE COURT: And the justification will be an
5 element of the crime. In other words, guilty or not
6 guilty, but one of the elements will be that the People
7 have to prove beyond a reasonable doubt that there was
8 no justification.

9 MR. WALENSKY: Right, right.

10 As I said, this is specific to rape and it's
11 Penal Law 35 point -- you know, okay.

12 Thank you.

13 THE COURT: Anything else?

14 MR. WALENSKY: No, thank you. That's about
15 it.

16 THE COURT: All right, so tomorrow 9:30.

17 MS. CHU: Thank you.

18 THE COURT: Just wait a minute, please.

19 (Whereupon, there was a brief pause in the
20 proceedings.)

21 THE COURT: All right.

22 See you tomorrow, 9:30.

23 (Trial adjourned to July 9, 2014.)

24 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
25 THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
PROCEEDING.

Marlin Cassidy
MARLIN CASSIDY, Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART 2

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 ATARA WISDOM,

6 Defendant.

Indictment No.:
6615/2012
(Trial)

7 Supreme Courthouse
8 320 Jay Street
9 Brooklyn, New York 11201
July 9, 2014

10 B E F O R E:

11 THE HONORABLE ALBERT TOMEI, JUSTICE
12 (And a Jury)

13 A P P E A R A N C E S:

14 HON. KENNETH P. THOMPSON, ESQ.
15 District Attorney - Kings County
16 350 Jay Street
17 Brooklyn, New York 11201
BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

18 DAVID WALENSKY, ESQ.
19 Attorney for Defendant
20 910 Stuart Avenue
21 Mamaroneck, New York
BY: DAVID WALENSKY, ESQ.
- and -
JOSHUA POVILL, ESQ.

22
23
24 MARLIN CASSIDY
25 Senior Court Reporter

Proceeding

1 (Whereupon, the following took place in open
2 court:)

3 THE CLERK: Come to order, Part 2 is now in
4 session, the Honorable Albert Tomei presiding.

5 MS. CHU: People.

6 MR. WALENSKY: People did bring in Matthew
7 Shepard and I wanted to ask if he would speak with me.
8 And Ms. Chu asked him, and I have no doubt that she told
9 me the truth, that he said he didn't wish to speak with
10 me, however I would like to personally ask him.

11 There are three detectives outside the door,
12 I'd like to go in and ask him if we can talk and I think
13 I'm entitled to try to speak to a witness and I don't
14 think I have to rely on --

15 THE COURT: You can just tell him who you are
16 and what you want to do.

17 MR. WALENSKY: Thank you very much, your
18 Honor.

19 Go ahead.

20 THE COURT: Go ahead.

21 (Whereupon, there was a brief pause in the
22 proceedings.)

23 THE COURT: Call the case.

24 THE CLERK: This is calendar number one, case
25 on trial, Indictment 6615 of 2012, People versus Atara

Proceeding

1 Wisdom. Defendant is incarcerated, produced before the
2 Court, present with her attorney.

3 Appearances are the same.

4 MR. WALENSKY: Your Honor, I just went in to
5 speak to Mr. Shepard. The detective wouldn't stay
6 outside while I wanted to ask him if he said he didn't
7 want to speak to anyone. I said, can I talk to you? He
8 said yes, and -- but there's a detective there, there's
9 Ms. Chu there and --

10 MS. CHU: You're not his lawyer. It's not
11 like you have a meeting.

12 MR. WALENSKY: I believe completely there is a
13 matter of security, he is in a conference room outside
14 with three detectives standing outside the door on the
15 21st floor of a building which you only can get down in
16 the elevators.

17 So, I think I should be able to go in and
18 close the door and ask him a few questions. It's
19 certainly intimidating to have an A.D.A. there, have a
20 detective there. It's very simple, there is no security
21 risk and it will take me a minute, if he truly doesn't
22 want to.

23 THE COURT: Go there. My direction is that
24 you go in there and you tell the witness who you are and
25 if he wants to talk to you, all right, simple as that.

Proceeding

1 If he says no, you leave.

2 MR. WALENSKY: Can I go in alone without a
3 detective holding the door open?

4 MS. CHU: I object. He is not his lawyer. He
5 is entitled to speak to his lawyer separately. He is my
6 witness pursuant to a material witness order that I got
7 from you yesterday.

8 THE COURT: Let the detective open the door
9 and let the detective stand outside with the door open
10 so he can hear what you do and say. All right, fine,
11 let's go.

12 MR. WALENSKY: I want to put my objection on
13 the record.

14 THE COURT: You have an objection.

15 (Whereupon, there was a brief pause in the
16 proceedings.)

17 MR. WALENSKY: He said he is going to talk to
18 me. I requested they close the door while I speak to
19 him and so we are coming up to the Court because People
20 don't want to close the door and, you know, if it's a
21 witness, I think I am allowed to talk to him without
22 everybody hearing what I'm saying.

23 THE COURT: Did you tell him who you were?

24 MR. WALENSKY: I told him who I was. They
25 heard me say I'm Atara's lawyer and Ms. Chu says that is

Proceeding

1 Renee, and I said, she is on trial for murder. That is
2 what I said.

3 MS. CHU: Your Honor.

4 MR. WALENSKY: I said, can I speak with you
5 and then he said okay. And I wanted to talk to him. I
6 asked them to close the door, it was refused, so I came
7 in.

8 THE COURT: So what's the problem?

9 MS. CHU: The problem is he is going to take
10 the stand, there is a material witness order, he is
11 willing to testify, he will have ample opportunity --

12 THE COURT: He has a right to speak to the
13 witness.

14 MS. CHU: If that is how the Court wants to
15 rule...

16 THE COURT: Yeah. Go and speak to him.

17 MS. CHU: Whether he is allowed to speak to
18 the witness privately and whether or not I am allowed to
19 be present, he is my witness, he is not his witness, he
20 is not his lawyer.

21 MR. WALENSKY: Your Honor, the rules allow the
22 People to speak to any of my witnesses, they can go
23 privately, and they go privately, but they go without me
24 and they are allowed to talk without me.

25 There is no requirement that I am with a

Proceeding

1 witness and the same, there is no requirement People
2 know what I am saying to their witness. I am an
3 officer of the Court, I am not going to say anything
4 unethical.

5 THE COURT: One minute.

6 (Whereupon, there was a brief pause in the
7 proceedings.)

8 THE COURT: I will let you speak to him and
9 allow Ms. Chu to be present.

10 Go ahead.

11 MR. WALENSKY: I would object to that. It
12 just --

13 THE COURT: Your objection is noted. If you
14 want to speak to him, you can, and Ms. Chu can be there
15 when you speak to him.

16 MR. WALENSKY: Your Honor, Ms. Chu would be
17 free to cross -- to examine him. When she examines him,
18 she can ask him what I said in that room. I think
19 that's fine. Also, that puts me, in a sense, on the
20 spot not to do anything inappropriate.

21 THE COURT: I am not putting you on the spot
22 or anything. If you want to speak to him, you can
23 speak to him. If he wants to answer your questions,
24 fine. Ms. Chu is just there, she has a right to be
25 there.

Proceeding

1 Go ahead.

2 (Whereupon, there was a brief pause in the
3 proceedings.)

4 MR. WALENSKY: Your Honor, I went in and I
5 told Mr. Shepard that I was not allowed to speak to
6 him privately without an A D.A. present and that I
7 wasn't going to talk to him in that type of situation
8 and that we'd speak on the stand. But, again, it's -- I
9 think it's objectionable and I would move for a
10 mistrial.

11 THE COURT: What is objectionable about it?

12 MR. WALENSKY: I believe I'm allowed to speak
13 to him privately without anybody there. It's a matter
14 of security.

15 THE COURT: Under what rule, what principle or
16 rule?

17 MR. WALENSKY: Witnesses are available to
18 either side and there is no rule that requires that a
19 prosecutor or a defense attorney needs to be there. I
20 think that's common law.

21 THE COURT: It's common law?

22 MR. WALENSKY: Yeah, I believe so. If I'm
23 incorrect, I'm incorrect.

24 THE COURT: All right. You may be right.

25 Let's go. Come on.

Proceeding

1 Get the witness.

2 Get the jury out.

3 MS. CHU: Your Honor, this witness is here
4 obviously pursuant to a material witness order. I ask
5 that the order be vacated now that he is present.

6 THE COURT: The material witness order?

7 MS. CHU: Yes.

8 THE COURT: Yes, that's vacated at this time.

9 (Whereupon, there was a brief pause in the
10 proceedings.)

11 COURT OFFICER: Ready for the jury, your
12 Honor?

13 THE COURT: Yes.

14 COURT OFFICER: Jury entering.

15 (Whereupon, the Jury entered the courtroom.)

16 THE CLERK: All members of the jury are
17 present and seated.

18 Both sides waive the roll call?

19 MS. CHU: So waived.

20 MR. WALENSKY: Yes.

21 THE CLERK: Thank you.

22 THE COURT: Call your next witness.

23 MS. CHU: The People call Matthew Shepard.

24 (Whereupon, there was a brief pause in the
25 proceedings.)

Shepard - People - Direct/Ms. Chu

1 COURT OFFICER: Judge, are you ready for the
2 witness?

3 THE COURT: Yes.

4 COURT OFFICER: Witness is entering.
5 Follow me.

6 (Whereupon, Matthew Shepard entered the
7 courtroom and took the witness stand.)

8 THE CLERK: Raise your right hand.

9 Do you solemnly swear or affirm the testimony
10 you're about to give will be the truth, the whole truth
11 and nothing but the truth, so help you God?

12 THE WITNESS: I affirm.

13 THE CLERK: Put your hand down, please.

14 State your name for the record.

15 THE WITNESS: Matthew Shepard.

16 THE CLERK: Spell your last name.

17 THE WITNESS: S-H-E-P-A-R-D.

18 THE CLERK: Have a seat.

19 Thank you.

20 THE COURT: All right, Mr. Shepard, just take
21 a seat, pull it up close to the microphone and when you
22 speak, put your lips close to the microphone in
23 responding to any questions.

24 Proceed.

25 MS. CHU: Thank you.

Shepard - People - Direct/Ms. Chu

1 M A T T H E W S H E P A R D, called as a witness by and
2 on behalf of the People of the State of New York,
3 after having been first duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. CHU:

7 Q Good morning, Mr. Shepard.

8 A Good morning.

9 Q I can't hear you.

10 A Good morning.

11 Q How old are you, sir?

12 A Forty-nine.

13 Q And have you ever gone by the name Matthew

14 Bridgeton (phonetic)?

15 A Yes.

16 Q And I am going to ask you, do you have a criminal
17 record?

18 A Yes.

19 Q Yes?

20 A Uh-huh.

21 Q Do you recall going to jail for a drug case back in
22 2011?

23 A I don't know when I have been locked up for drugs.

24 Q And did you also have a criminal history in
25 Pennsylvania?

Shepard - People - Direct/Ms. Chu

1 A Yes.

2 Q And what about in New Jersey?

3 A Yes.

4 Q That was for drugs?

5 A Yes.

6 Q Yes?

7 A Uh-huh.

8 THE COURT: Were you convicted for these
9 crimes, yes or no?

10 THE WITNESS: Yes.

11 THE COURT: All right, Mr. Shepard, you are
12 going to have to keep your voice up loud.

13 All right, proceed.

14 Q You had a couple of things that happened in New
15 Jersey for drugs where you were arrested and you were
16 convicted, right?

17 A Yes.

18 Q Now I want to direct your attention to the fall of
19 2011.

20 Do you recall living on Cedar Street here in
21 Brooklyn?

22 A Yes.

23 Q And can you tell me, did you know a person by the
24 name Tony or were you familiar with this person?

25 A From seeing him, yes.

Shepard - People - Direct/Ms. Chu

1 Q I'm sorry?

2 A From seeing him.

3 Q And where would you see him?

4 A Basically just panhandling and doing whatever he
5 doing. I mean, I didn't make it a point, I'm saying, like to
6 interact with him. But I saw him, he lived in my hood.

7 Q He lived in your neighborhood?

8 A Uh-huh.

9 Q Can you tell us, where would you --

10 Do you remember the streets that you used to see
11 him on?

12 A Not any one specific.

13 Q Do you remember seeing him on Broadway where the
14 doctor's office was?

15 MR. WALENSKY: Objection, leading the
16 witness.

17 THE COURT: Don't lead the witness, please.

18 Q Did you ever see him on Broadway?

19 A From time to time.

20 Q Now, did you have any relationship with him other
21 than just seeing him in the neighborhood?

22 A No.

23 Q Did you know where he lived?

24 A Not specifically.

25 Q Are you familiar with the corner of Bushwick and

Shepard - People - Direct/Ms. Chu

1 Kosciuszko?

2 A Yes.

3 Q Do you know whether or not he lived anywhere near
4 there?

5 A I didn't know specifically. I later learned he
6 lived there.

7 Q Okay.

8 Now, can you tell me, did you meet a woman by the
9 name of Renee?

10 A Yes.

11 Q And how did you meet her?

12 A I was introduced to her by a mutual friend.

13 Q And who's this mutual friend?

14 A I don't know his name. They call him Bear.

15 Q Where were you when you met her?

16 A I was in the parking lot, the laundromat parking
17 lot across from the clinic.

18 Q Can you tell me, how did it come to be that you
19 were -- that you met her?

20 A I was introduced to her.

21 Q Did you ask to be introduced to her or did Bear
22 just do it on his own?

23 A I asked Bear who was she. He introduced me to
24 her.

25 Q Did you have a conversation with Renee at this

Shepard - People - Direct/Ms. Chu

1 time?

2 A Briefly.

3 Q And what did she tell you?

4 A She said that she was staying with Tony. She said
5 she didn't have anywhere to stay, that is who she staying
6 with.

7 THE COURT: Mr. Shepard, I will ask you again
8 to speak louder.

9 THE WITNESS: I have a condition.

10 THE COURT: Okay, but just try to speak a
11 little louder so the jury and everyone else can hear
12 you, okay.

13 You had a brief conversation, and what was
14 your question?

15 Q You said that she had mentioned that she was
16 staying with Tony?

17 A Yes.

18 Q And she said because she didn't have any other
19 place to stay?

20 A Yes.

21 Q Now, did you ask her for her phone number?

22 A Sure.

23 Q And did you give her yours?

24 A Yes.

25 Q Did you have a cellphone at the time?

Shepard - People - Direct/Ms. Chu

1 A Yes.

2 Q Can you tell me, was the cellphone you got in your
3 name?

4 A I'm not sure. I think so.

5 Q Okay.

6 Well, your name is Matthew Shepard?

7 A That's my name.

8 Q Okay.

9 Do you recall what your phone number was back
10 then?

11 A No, I don't.

12 Q Now, but you did have a phone that was in your
13 name?

14 A I'm almost sure I did.

15 Q Okay.

16 Can you tell me, do you recall what time of the
17 year it was that you met Renee across the street from the
18 clinic?

19 A It was one of the warmer months. I'm not sure.

20 Q That's 2011?

21 A I'm not sure.

22 Q Let me ask you, can you just take a look around the
23 courtroom and see if you see Renee here?

24 A I think that's her, I'm not sure. She looks
25 different.

Shepard - People - Direct/Ms. Chu

1 Q Can you tell me who you are talking about?

2 A The young lady sitting right there between the
3 attorneys.

4 Q Can you tell me something that she's wearing?

5 A There is only one young lady sitting there.

6 Q You have to state for the record. The record can't
7 see her.

8 A The young lady with the pink -- what is that, pink
9 shirt on or something?

10 THE COURT: Indicating the defendant.

11 Proceed.

12 Q This person is the person that was introduced to
13 you as Renee?

14 MR. WALENSKY: Objection.

15 A She looks different.

16 THE COURT: What?

17 Q What did she --

18 A Gained some weight or something. I don't know.
19 She looks different.

20 Q How you remember her, she looked different?

21 A Yes.

22 Q Does that look like it's her?

23 A I think so. She looks different.

24 Q Other than weight?

25 A She looks different. It's been a long time.

Shepard - People - Direct/Ms. Chu

1 Q Okay.

2 Now, can you tell me, did you know -- other than
3 her saying she was living with Tony, did she give you any
4 indication as to the type of relation she had?

5 A Not at all. We didn't converse about that at
6 length, you know. I was just talking to her, you know. At
7 that time, you know, I was looking at her, I was talking to
8 her. I'm a single man, you know.

9 Q You found her attractive?

10 A At the time.

11 Q And can you tell me, sometime around Thanksgiving
12 of 2011, I guess a couple of days after Thanksgiving, did
13 there come a time when you received a phone call in the early
14 morning?

15 A Yes.

16 Q And can you tell me, who was it from?

17 A It's from Renee.

18 Q Can you tell me, what did she want on the phone?

19 A She called me, she asked me what was I doing and
20 asked if she could come by.

21 Q Did you make arrangements to meet her?

22 A I said, yeah, we can meet.

23 Q Can you tell me, where did you make arrangements to
24 meet her?

25 A On De Kalb.

Shepard - People - Direct/Ms. Chu

1 Q On De Kalb Avenue?

2 A Yes.

3 Q The phone number that she called you from -- I'm
4 sorry.

5 Did your cellphone have the capacity to know what
6 caller I.D. was?

7 A Sure.

8 Q Can you tell me, when Renee called you on the
9 phone, do you remember what number it -- did your phone
10 recognize that phone number?

11 A Sure. She gave me the phone number prior to that.
12 The number was given under Tony.

13 Q It was Tony's cellphone number?

14 A Yes, it was Tony cellphone number that was given to
15 me because I didn't want my girl to find out another girl was
16 talking to me, I put it under Tony.

17 Q That is the phone number she had given to you when
18 she was introduced by Bear?

19 A Yes.

20 Q Can you tell me, did there come a time when you
21 actually met her on De Kalb?

22 A Yes.

23 Q Can you tell me, did she have anything with her
24 when she met you?

25 A Yes, she had a few bags.

Shepard - People - Direct/Ms. Chu

1 Q Do you remember how many?

2 A I don't know, three or four.

3 Q Three or four?

4 A Maybe.

5 Q Can you tell me, why did she want to meet you? Did
6 she tell you?

7 A Initially, no, you know. I'm not sure, man. I'm
8 not sure. You are talking about two years ago or something,
9 you know.

10 Q Do you recall what she said to you when you saw her
11 on De Kalb?

12 A Joking about the bags she had. I don't know. I
13 mean, my mind was on some sex.

14 Q You wanted to have sex with her?

15 A My mind was on some sex. She called me that time
16 in the morning, I'm a single man, you know what I mean?

17 Q So you wanted to have sex with her?

18 A You calling me at that time of the morning, I'm a
19 single man...

20 Q Okay.

21 Did she tell you anything about Tony when she saw
22 you?

23 A Initially, no. I asked her what was going on, you
24 know, because she seemed a little bit, you know, and she was
25 like, you know, she and her friend had an altercation.

Shepard - People - Direct/Ms. Chu

1 Q Okay?

2 A You know, I'm really not paying attention, you
3 know.

4 Q What did she say happened?

5 A She said they had an altercation.

6 Q Okay.

7 A All right. And I assumed, you know, what was going
8 on. I wasn't really taking her serious about that. You know
9 what I'm saying? And she said, I'm not paying rent and
10 fucking him. I am not going to pay rent and fuck him too.

11 THE COURT: Repeat what he said, please.

12 (Whereupon, the referred-to answer was read
13 back by the Reporter.)

14 Q Did she say anything else?

15 A That was it.

16 Q Did she say anything about what she might have done
17 to Tony?

18 A She said she poked him.

19 Q She what?

20 A She poked him.

21 Q What does that mean, poke?

22 A I don't know. Ask her.

23 Q I am asking you, do you know what that means?

24 A I don't know. That's what she said. I don't know.

25 Q After she said that, what did you do?

Shepard - People - Direct/Ms. Chu

1 A What you mean, what I did?

2 Q Did you stay with her?

3 A Sure. She asked me could she come by. I said, you
4 know, all right, la-da-da. My mind was, you know. Anyway,
5 look, I don't know nothing. I don't know her, I don't know
6 him. I don't know her, I don't know him. I met her, that's
7 that. All I can tell you is what she told me, that's that.

8 Q After she told you this, did you go to your house?

9 A Huh?

10 Q After she told you this, did you go to your house?

11 A Yeah, I went to my house.

12 Q Was she with you?

13 A Sure.

14 Q Can you tell me, how long did she stay at your
15 house?

16 A She didn't stay long. A few hours, maybe.

17 Q I'm sorry?

18 A A few hours, maybe.

19 Q And you told her she couldn't stay?

20 A Yeah, I gotta take care of things. I got things to
21 do. I had things to do, I had to go to Manhattan.

22 Q She had to leave by the time you were leaving?

23 A That's right.

24 Q Can you tell me, did you know whether she had any
25 injuries on her when you saw her?

Shepard - People - Direct/Ms. Chu

1 A I'm not sure. I'm not sure, but I'm almost sure
2 she had a swelling up on her face, a little bit, you know
3 what I mean?

4 Q Other than that, did you see any blood on her
5 clothes, anything like that?

6 A No, I didn't see none of that. She wouldn't be
7 going to my crib if she had.

8 Q I'm sorry?

9 A She would never got to my house if she had that on
10 her.

11 Q Okay.

12 What was her demeanor like when she was talking to
13 you?

14 MR. WALENSKY: Objection.

15 A I don't know.

16 THE COURT: Overruled.

17 Did you understand the question?

18 A Repeat it.

19 THE COURT: How did she appear to you at the
20 time?

21 THE WITNESS: No specific way. I mean, you
22 know, I wouldn't have -- you know, I'm saying she would
23 have done what they said she done, I don't know. I
24 don't know. How does a person act, you know what I'm
25 saying?

Shepard - People - Direct/Ms. Chu

1 Q Was she acting unusual at all?

2 A I never been around her so I don't know how she
3 acts. I never been around her, I don't know what her norm
4 is.

5 Q Now, you said she left your apartment eventually
6 because you had to go out?

7 A Yeah, I had to go.

8 Q Did you see who came to get her?

9 A I don't remember who came and got her. I think it
10 was a gentleman.

11 Q Okay.

12 Can you tell me, did you have any contact with her
13 after that day?

14 A Excuse me?

15 Q After she left your apartment --

16 A No.

17 Q -- did you have any contact with her?

18 A No. Nah.

19 Q Now I want to direct your attention to the
20 following year in January, January 3rd of 2012.

21 Did there come a time when you were in the vicinity
22 of Bushwick and Kosciuszko?

23 THE COURT: January 3rd, what?

24 MS. CHU: 2012.

25 A I don't know about the date you're talking about.

Shepard - People - Direct/Ms. Chu

1 Q Do you remember seeing --

2 Do you know Shakeema Fortune?

3 A You're talking about Keema?

4 Q Yeah, Keema.

5 A I know Keema.

6 Q Do you recall her being in the vicinity of
7 Kosciuszko and Bushwick when there was police around?

8 A Yes.

9 Q All right.

10 Can you tell me, did you speak with Keema at that
11 time?

12 A Sure, police stopped me.

13 Q Did you also speak to the police?

14 A They made me spoke to him.

15 Q When you spoke to them, did you tell them about the
16 conversation you had with Renee that night when she told you?

17 A No.

18 Q Not initially?

19 A No.

20 Q Did you eventually tell them that?

21 A Yeah.

22 Q You recall also speaking to a District Attorney
23 from my office, do you remember that, on audiotape?

24 A I heard the tape.

25 Q Do you recall if you told the A.D.A. on --

Shepard - People - Direct/Ms. Chu

1 MR. WALENSKY: Objection, your Honor,
2 impeaching her own witness.

3 THE COURT: What she's saying is impeaching?

4 MR. WALENSKY: Well, about to.

5 THE COURT: Overruled.

6 Proceed.

7 Q Do you remember speaking to the A.D.A. on the
8 audiotape?

9 A Yes.

10 Q And you told them what happened when you saw Renee
11 that morning?

12 A Uh-huh.

13 Q Yes?

14 THE COURT: You gotta answer yes or no, sir.

15 A Yes.

16 Q Do you also recall when you first met me when you
17 came to the Grand Jury?

18 A Vaguely.

19 Q Do you remember talking about what happened with
20 Renee in the Grand Jury?

21 A Yes.

22 Q Now, sometime around the time that you came to the
23 Grand Jury, a couple of days before that, do you remember
24 going to the precinct to look at a lineup?

25 A You came to pick me up to do so.

Shepard - People - Direct/Ms. Chu

1 Q Do you remember looking at a lineup?

2 A Yes.

3 Q Did you recognize anyone in the lineup?

4 A Yes.

5 Q Who did you recognize?

6 A I recognized Renee.

7 Q Do you recall what position she was in?

8 A No, I don't.

9 Q But you remember that she was in the lineup?

10 A Yes.

11 Q Now, can you tell me, did you tell -- I'm sorry.

12 Were you with a detective when you looked at this

13 lineup?

14 A I'm not sure. I think so.

15 Q Did you tell the detective that you recognized her?

16 A Sure. I think so.

17 Q When was the last time that you had seen Renee

18 prior to you seeing her in the lineup?

19 A On De Kalb and at my house.

20 Q The night she came to get you with the four bags,

21 the three or four bags?

22 A Uh-huh.

23 Q Yes?

24 A Uh-huh. Yes.

25 MS. CHU: I have nothing further for this

Shepard - People - Cross/Mr. Walensky

1 witness.

2 Thank you.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MR. WALENSKY:

6 Q Good morning, Mr. Shepard.

7 A Good morning.

8 Q You remember a little while ago I wanted to speak
9 with you?

10 A Yes.

11 Q And I wasn't permitted to speak --

12 MS. CHU: Objection.

13 THE COURT: Objection sustained. The jury is
14 to disregard the question.

15 Q You were brought in today in handcuffs?

16 A Initially.

17 Q Initially, right.

18 Police got you and brought you in?

19 A Uh-huh.

20 THE COURT: You have to say yes or no, not
21 "uh-huh," okay?

22 THE WITNESS: Okay.

23 Q Now, you identified the woman sitting there as
24 Renee, right?

25 A Yes.

Shepard - People - Cross/Mr. Walensky

1 Q And that was an assumption, wasn't it?

2 MS. CHU: Objection.

3 A She looks different.

4 Q She looks different. You didn't recognize her as
5 the woman that you knew back in 2011, right?

6 MS. CHU: Objection.

7 A She looks different.

8 THE COURT: Sustained. He didn't say that.
9 He said that he thinks she looks different, that is
10 all.

11 Q Do you recognize her as that woman?

12 A She looks different.

13 Q Does she --

14 THE COURT: Do you recognize her, yes or no,
15 as that woman?

16 THE WITNESS: She looks different, I keep
17 telling you.

18 THE COURT: What do you mean, she looks
19 different?

20 THE WITNESS: She looks different, that's all.
21 She gained weight. I don't know what she looks like. I
22 met her two times in my life. I see a lot of people. I
23 do music, you know.

24 THE COURT: The question, sir, --

25 A She looks different. I seen her before, she looks

Shepard - People - Cross/Mr. Walensky

1 different.

2 THE COURT: All right, go ahead. Proceed.

3 Q You can't identify her as the person you saw then?

4 That's a simple question.

5 A No, I couldn't. I couldn't put my life on it.

6 Q Okay. Thank you.

7 MR. WALENSKY: Move to strike the prior
8 identification.

9 MS. CHU: Objection.

10 THE COURT: Overruled.

11 Q Now, Mr. Shepard, you haven't had any problems with
12 the law in a while now?

13 A In a while I haven't.

14 Q Is it fair to say that drugs have been -- have been
15 a problem?

16 A Yes, they have.

17 Q Right.

18 And I'm not going through your whole -- through
19 your criminal record.

20 A It's public information.

21 Q Now, in 2011 you were convicted of criminal
22 possession of drugs, possessing drugs?

23 A Okay.

24 Q Did you go to a drug treatment program pursuant to
25 that?

Shepard - People - Cross/Mr. Walensky

1 A A short time.

2 Q Was it an inpatient program?

3 A No, it was not.

4 Q Outpatient? Because you got a sentence of
5 four-and-a-half to nine years?

6 A Uh-huh.

7 Q And how much --

8 That was --

9 You were sentenced on October 25th of 2011?

10 A Uh-huh.

11 Q Did you go to jail after that?

12 A Yes.

13 Q When you were sentenced?

14 A Yes.

15 Q How long did you go to jail?

16 A I did, look, jail time. I don't know. I got
17 charged to New Jersey jail, all right. I came out. As far
18 as my drugs history, I've had a problem with drugs.

19 Q October 25th, 2011, you went to jail?

20 A I don't know what date I went to jail. I been in
21 jail a couple of times.

22 Q That's the last time, apparently, so --

23 MS. CHU: It was 2000 -- it's the year 2001.

24 MR. WALENSKY: So this is a misprint?

25 MS. CHU: That was a misprint.

Shepard - People - Cross/Mr. Walensky

1 MR. WALENSKY: Thank you. Wonderful.

2 Q All right.

3 So back then you did four-and-a-half to nine, but
4 that's a long time ago.

5 You also got a conviction for --

6 When was the last time you got high? It's not --
7 no one is arresting you.

8 A Then why you ask me?

9 Q It's just -- I just --

10 A I'm not going to answer it.

11 Q Okay.

12 Did you get high last week?

13 A I don't want to answer it. You going to make me
14 answer it?

15 Q Nah.

16 A Okay.

17 Q I won't make you answer it.

18 I'm going to deal with that night, though, okay,
19 that Renee called you; all right?

20 A Right.

21 Q You are not on trial, all right?

22 A I see that.

23 Q She called your cell early in the morning, 4:00,
24 5:00 in the morning?

25 THE COURT: The response is yes or no.

Shepard - People - Cross/Mr. Walensky

1 A I think so. I'm not sure. It's two years ago.

2 Q And you said that she sounded stressed when she
3 first called you; you recall that?

4 A I think so. I think so.

5 Q And then you met her, and as you said, you were
6 thinking about having sex when you met her?

7 A Sure.

8 Q You thought that she wanted to get down with you?

9 A Sure.

10 Q And when you saw her, she had all these bags,
11 right?

12 A Yes.

13 Q And you joked, said, what are you a bag lady,
14 something like that?

15 A Something to that.

16 Q Because in your mind you're thinking you are
17 getting down and you didn't know what this was about, right?

18 A Call me 2:00, 3:00, 4:00 in the morning, single
19 man, you know.

20 Q You had been in Jersey the night before, right?

21 A Sure.

22 Q So you had been up the whole night?

23 A Possibly. Possibly. Very much possibly.

24 Q In fact, when you made a video, an audio, the audio
25 with the D.A., you told him that you were bad fucked up at

Shepard - People - Cross/Mr. Walensky

1 that time, right?

2 A I may have been.

3 Q And you also told them that you weren't paying
4 attention to what she was telling you?

5 A Not really.

6 Q 'Cause you were concentrating on --

7 A Yeah.

8 Q -- what could happen?

9 A Right.

10 Q And you did say that you did see she was a little
11 swollen? She did tell you she was hit by Anthony, right?

12 A Yes, she did.

13 Q She looked a little swollen around the eye?

14 A Yeah, I think so. I think so.

15 Q But, again, you came back, she said you want to go
16 back to the house, right?

17 A No. She said -- she asked me could she come there.
18 She asked me that when she called.

19 Q You brought her back and you were still hoping that
20 something would happen between you two?

21 A That is what I took her there for.

22 Q Yeah.

23 When you got there, she was talking? Was she
24 talking a bit?

25 A She wasn't talking about that.

Shepard - People - Cross/Mr. Walensky

1 Q Did she tell you that Anthony tried to rape her at
2 that time?

3 A He tried to force his self on her, she did say
4 that.

5 Q He tried to force --

6 THE COURT: When did she say that? Where did
7 she say that?

8 THE WITNESS: She said that at my house that
9 morning.

10 THE COURT: In what context? How did she say
11 that? How did that come up?

12 Did you hear what I just said?

13 THE WITNESS: I'm thinking so I can answer
14 correctly.

15 THE COURT: The question is, how did it come
16 up at your house?

17 THE WITNESS: Okay. I was asking her what
18 was -- you know, what was wrong with her, you know. She
19 was telling me, you know, listen, I'm -- this guy is
20 crazy, I'm not going to pay rent and fuck him.

21 THE COURT: So --

22 THE WITNESS: He tried to take it.

23 You asked me a question, let me answer it.

24 THE COURT: He tried to what?

25 THE WITNESS: He tried to take it, tried to

Shepard - People - Cross/Mr. Walensky

1 force his self on her.

2 THE COURT: Go ahead.

3 THE WITNESS: That is where I got that from,
4 out her mouth. I was not there.

5 THE COURT: This was said at your house?

6 THE WITNESS: Yes, this was said at my house.

7 THE COURT: Okay.

8 Q Now, did you tell her that you should check on him,
9 on Anthony? Do you remember?

10 A I may had. I may had.

11 Q Did she ask you to go back with her and check on
12 Anthony?

13 A She said -- yes, she did say, you know. I think
14 she did.

15 Q And you didn't want to go?

16 A Hell no. I ain't going to that man's house.

17 MR. WALENSKY: I have no further questions.
18 Thank you.

19 MS. CHU: If I may, I have a couple of
20 questions for the witness, your Honor.

21 THE COURT: One minute.

22 Come on up.

23 (Whereupon, there was a brief pause in the
24 proceedings.)

25 THE COURT: Come on up, People, please. Come

Shepard - People - Redirect/Ms. Chu

1 on up.

2 (Whereupon, a sidebar conference was held off
3 the record.)

4 REDIRECT EXAMINATION

5 BY MS. CHU:

6 Q Mr. Shepard, I just have a couple of questions for
7 you. You were asked several times by myself as well as
8 defense counsel about whether or not the person sitting there
9 is the person that you remember being Renee back in 2011,
10 2012. Do you remember that?

11 A Yes.

12 Q You have to answer. I can't hear you.

13 A Yes.

14 Q You said that because of the way she looks now,
15 that she looks different to you, that you are not quite sure
16 that's the same person?

17 A She looks different. She has gained weight. She
18 looks different.

19 Q But is that the same person?

20 A Possibly. I only seen her twice in my whole life.

21 Q You're not saying because she looks different --

22 A I met her briefly, briefly. I haven't been with
23 her more than a total of two hours and a half in my whole
24 life.

25 Q Let me ask you, when you looked at the lineup --

Shepard - People - Redirect/Ms. Chu

1 you remember looking at the lineup?

2 A Sure. More recent, sure.

3 Q July 25th, 2012, is in fact when you looked at the
4 lineup?

5 A I don't know what the date was. I do remember
6 looking at the lineup.

7 Q You had looked at a lineup and you recognized Renee
8 in the lineup?

9 A Sure.

10 Q Okay.

11 And you were sure that that was Renee when you saw
12 her?

13 A I'm positive.

14 Q When you recognized her and were sure it was her,
15 you were being honest when you told them that that's her,
16 that's Renee?

17 A That was Renee.

18 Q Okay. Thank you very much.

19 MS. CHU: I have nothing further.

20 MR. WALENSKY: Nothing further.

21 THE COURT: You may step down. Thank you.

22 (Whereupon, Matthew Shepard stepped down from
23 the witness stand and exited the courtroom.)

24 THE COURT: Call your next witness.

25 MR. WALENSKY: Your Honor, may we have a

Proceeding

1 break? My client --

2 THE COURT: All right, we will take a short
3 recess.

4 Ladies and gentlemen, do not discuss the case
5 amongst yourselves or with anyone else.

6 Leave your books on your seat.

7 Take a ten-minute break.

8 (Whereupon, the Jury exited the courtroom.)

9 THE COURT: All right, ten-minute recess.

10 (Whereupon, a brief recess was held.)

11 THE COURT: Bring her out.

12 Get the jury.

13 What is she going to do, Mr. Walensky?

14 MR. WALENSKY: Your Honor, she will not be
15 testifying.

16 I just will make a record.

17 THE COURT: All right.

18 THE CLERK: Case on trial continues. All
19 parties present. Defendant present with her attorney.

20 THE COURT: All right.

21 Is someone getting the jury?

22 SERGEANT: Yes.

23 (Whereupon, there was a brief pause in the
24 proceedings.)

25 COURT OFFICER: Ready for the jury?

Det. Batanjany - People - Direct/Ms. Chu

1 THE COURT: Bring the jury out, please.

2 COURT OFFICER: Jury entering.

3 (Whereupon, the Jury entered the courtroom.)

4 THE CLERK: All jurors are present and seated.

5 Both sides waive the roll call?

6 MS. CHU: So waived.

7 MR. WALENSKY: Yes.

8 THE COURT: Call your next witness, please.

9 MS. CHU: People call Deborah Batanjany.

10 (Whereupon, there was a brief pause in the
11 proceedings.)

12 COURT OFFICER: Judge, ready for the witness?

13 THE COURT: Yes.

14 COURT OFFICER: Witness is entering. Follow
15 me.

16 (Whereupon, Detective Deborah Batanjany
17 entered the courtroom and took the witness stand.)

18 THE CLERK: Raise your right hand.

19 Do you solemnly swear or affirm the testimony
20 you're about to give will be the truth, the whole truth
21 and nothing but the truth, so help you God?

22 THE WITNESS: Yes, I do.

23 THE CLERK: Please state your name for the
24 record.

25 THE WITNESS: Detective Batanjany.

Det. Batanjany - People - Direct/Ms. Chu

1 THE CLERK: Spell your first name and last
2 name.

3 THE WITNESS: D-E-B-O-R-A-H, Batanjany,
4 B-A-T-A-N-J-A-N-Y.

5 THE CLERK: Can you give your shield?

6 THE WITNESS: 1408.

7 THE CLERK: And your command?

8 THE WITNESS: 8-3 Squad.

9 THE CLERK: Thank you.

10 THE COURT: Proceed.

11 MS. CHU: Thank you.

12 D E B O R A H B A T A N J A N Y, Detective, Shield No.
13 1408, 83rd Precinct, New York City Police
14 Department, called as a witness by and on behalf of
15 the People of the State of New York, after having
16 been first duly sworn, was examined and testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MS. CHU:

20 Q Good morning, Detective.

21 A Good morning.

22 Q How long have you been working for the New York
23 City Police Department?

24 A Fifteen years.

25 Q Can you tell me, how long have you been with the

Det. Batanjany - People - Direct/Ms. Chu

1 83rd Precinct?

2 A About six-and-a-half years.

3 Q Can you tell us about your career, starting from
4 when you got out of the Academy?

5 A I was originally assigned to the 7-7 Precinct,
6 that's patrol, and after about six-and-a-half years I went to
7 the 83rd Precinct Detective Squad as an investigator.

8 Q Now, did there come a time when you became involved
9 in an investigation into the death of a person by the name of
10 Anthony Wilson?

11 A Yes.

12 Q And how did you become involved in the case?

13 A The original case detective was transferred from my
14 command somewhere else.

15 Q Who was the original case detective?

16 A Geoffrey Hernandez.

17 Q When did you become involved in the case?

18 A It was April 16th of 2012.

19 Q Now, at the time that you came into the case was an
20 investigation already -- I'm sorry, withdrawn.

21 By the time you came into the case were they
22 looking for someone by the name Atara Wisdom?

23 A Yes, they were.

24 Q Do you know whether or not Detective Hernandez had
25 prepared an investigative card for Ms. Wisdom?

Det. Batanjany - People - Direct/Ms. Chu

1 A Yes, he did.

2 Q Do you remember when it was prepared?

3 A It was April the 2nd of 2012.

4 Q Now I want to direct your attention to July of
5 2012.

6 Did there come a time when you were notified that
7 Atara Wisdom had been located?

8 A Yes.

9 Q Who were you notified by?

10 A Detective Scandole (pronunciation).

11 Q Scandole?

12 A Scandole, sorry.

13 Q Where is he from?

14 A He is from the Homicide Squad.

15 Q Now, do you remember what date it was that you were
16 notified and about what time?

17 A It was July 25th and I believe he picked her up at
18 9:45 in the morning, so it was somewhere around that time.

19 Q Where were you when you were notified?

20 A I was at the 8-3 Squad.

21 Q You were already working?

22 A Yes, I was.

23 Q Did there come a time when she was brought to the
24 precinct?

25 A Yes.

Det. Batanjary - People - Direct/Ms. Chu

1 Q And where was she put when she was brought into the
2 precinct?

3 A The interview room in the Detective Squad.

4 Q What area of the precinct --

5 How many floors is the precinct?

6 A It's the second floor, and the precinct has two
7 floors.

8 Q Okay.

9 Now, where was she when you first saw her?

10 A She was in the interview room.

11 Q She was already in the room?

12 A Yes.

13 Q You didn't see her being brought up and into the
14 room?

15 A No.

16 Q Can you take a look around the courtroom and tell
17 if you see Atara Wisdom here and indicate what she's wearing?

18 A Yes. She's wearing a striped shirt, a maroonish,
19 red striped shirt.

20 THE COURT: Indicating the defendant.

21 MS. CHU: Thank you.

22 Q On July 25th, 2012 did there come a time when you
23 began to arrange for a lineup?

24 A Yes.

25 Q Can you explain to the members of the jury, what is

Det. Batanjany - People - Direct/Ms. Chu

1 a lineup?

2 A A lineup consists of anywhere from five to six
3 people, including the subject. There are, like I said, about
4 four to five fillers that are in it and we usually try to get
5 people that have similar features and the subject.

6 Q Okay.

7 Who was going to be the subject of the lineup that
8 you were preparing?

9 A Atara Wisdom.

10 Q Now, did you contact any witnesses to come to the
11 precinct to look at the lineup?

12 A Yes.

13 Q Who did you contact?

14 A Sorry. Matthew Shepard. My mind went blank.

15 Q How did you contact him?

16 A By phone.

17 Q Did you make any arrangements with Mr. Shepard to
18 bring him to the precinct?

19 A Yes.

20 Q Now, what time was it that you brought Mr. Shepard
21 back to the precinct?

22 A I would say it was about a half hour, 45 minutes
23 prior to the lineup. So, maybe around, I think it was -- the
24 lineup was at 5:15 so it was probably around 4:30-ish, 4:30.

25 Q Did anyone go with you when you went to pick up Mr.

Det. Batanjany - People - Direct/Ms. Chu

1 Shepard?

2 A Yes, Detective Hernandez did.

3 Q Did there come a time when you brought Mr. Shepard
4 back to the precinct?

5 A Yes.

6 Q Where in the precinct?

7 A In the BRAM interview room.

8 Q Where is that?

9 A That's an office next to the squad.

10 Q Did you have to pass by the interview room where
11 the defendant was in order to bring Mr. Shepard to where he
12 was?

13 A No.

14 Q Once you placed him in that room, did you stay with
15 him?

16 A I stayed with him or another detective did.

17 Q Okay.

18 Can you tell me, did you give him any instruction
19 about not wandering the precinct or anything like that?

20 A Yes, he was told to stay in the room.

21 Q You had mentioned fillers are part of the lineup.
22 Can you tell me, where did you get your fillers from?

23 A We got -- four fillers were from a woman's shelter
24 and one filler was an officer.

25 Q Where did you make arrangements for the officer to

Det. Batanjany - People - Direct/Ms. Chu

1 participate in the lineup?

2 A Prior to the lineup I spoke with her, and she has
3 an office in the precinct so we asked her if she could be in
4 the lineup, then we asked her to stay inside the office until
5 we got her.

6 Q Why did you ask her to do that?

7 A So that the witness would not see her.

8 Q Okay.

9 Now, at the time you brought Mr. Shepard to the
10 precinct was the officer already notified to stay in her
11 office?

12 A Yes.

13 Q Now, do you know who it was that went to get the
14 fillers?

15 A Detective Hernandez did.

16 Q Do you know whether he took any photographs of Ms.
17 Atara Wisdom in order to go to the shelter?

18 A I'm not sure.

19 Q Did there come a time when he brought back fillers
20 to the precinct?

21 A Yes.

22 Q Can you tell me, do you remember how he brought
23 them into the precinct?

24 A He first brought them into the hallway right before
25 the squad for a brief moment and then about a minute later

Det. Batanjany - People - Direct/Ms. Chu

1 they were brought into the interview room that Atara Wisdom
2 was in.

3 Q Did they have to go --

4 Did any of the fillers have to go past the area
5 where your witness, Mr. Shepard, was?

6 A No.

7 Q Was Mr. Shepard in a room that had a door?

8 A Yes.

9 Q Was that door closed?

10 A Yes.

11 Q Is there any way to see out of that room once
12 you're in there with the door closed?

13 A No, because the interview room is another office.
14 So it's one door shut into an office, into the interview
15 room, which there is another door shut, so it's actually two
16 doors into -- from -- like you walk in the hallway, you go in
17 to the BRAM regular office, then the interview room is inside
18 of that. It's actually two doors in. You cannot see from
19 the hallway at all.

20 Q Now, once the fillers were eventually brought into
21 the room, did you get the officer to go into the room as
22 well?

23 A Yes.

24 Q Do you remember, what position was the defendant in
25 in the lineup?

Det. Batanjany - People - Direct/Ms. Chu

1 A Position number two.

2 Q Do you know how she came to be in position number
3 two?

4 A She picked position number two.

5 Q Okay.

6 Once she picked position number two, were the other
7 fillers just placed randomly?

8 A Yes, I believe so.

9 Q Can you tell me, did they have anything to identify
10 which position they were?

11 A They were each handed numbers.

12 Q And what do you mean, numbers on...

13 A They each had a number, one through six, that they
14 had to hold, it was like on cardboard.

15 Q Okay.

16 Can you tell me, was the lineup memorialized in any
17 way?

18 A Yes, pictures were taken.

19 Q Do you recall who took the pictures?

20 A Detective Hernandez did.

21 Q Do you have those photos with you today?

22 A Yes, I do.

23 THE COURT: Before you proceed, who originally
24 had the case?

25 THE WITNESS: Detective Hernandez.

Det. Batanjany - People - Direct/Ms. Chu

1 THE COURT: Okay.

2 And you took over when?

3 THE WITNESS: April 16th of 2012.

4 THE COURT: And on July 25th was Hernandez
5 still working?

6 THE WITNESS: He got moved to the Homicide
7 Squad, so Homicide Squad assists us.

8 THE COURT: Go ahead. Okay.

9 Q You said you do have the photos with you?

10 A Yes, I do.

11 Q How many are there?

12 A Let me get them out.

13 (Whereupon, there was a brief pause in the
14 proceedings.)

15 A There's four photos here.

16 MS. CHU: Okay.

17 Your Honor, if I can have them deemed 58A
18 through D, please.

19 THE COURT: Any objection?

20 MR. WALENSKY: No.

21 THE COURT: All right.

22 (Whereupon, the photographs were marked as
23 People's Exhibit 58A through 58D for identification.)

24 Q Detective, People's 58A through D, can you tell me,
25 do you recognize those photos?

Det. Batanjany - People - Direct/Ms. Chu

1 A Yes, I do.

2 Q What are those photographs? Photos of the...

3 A Of the lineup.

4 Q Do those photos fairly and accurately depict how
5 the lineup appeared when it was shown to Mr. Shepard on July
6 25th, 2012?

7 A Yes, they do.

8 MS. CHU: At this time, your Honor, I would
9 offer them into evidence as People's 58A through D.

10 MR. WALENSKY: No objection.

11 THE COURT: All right, in evidence.

12 (Whereupon, the photographs were marked as
13 People's Exhibit 58A through 58D in evidence.)

14 Q Detective, after the lineup was set up, did you
15 then go get Mr. Shepard?

16 A Yes, I did.

17 Q And was he still in the room that you had placed
18 him in earlier, in the RAM (sic) office?

19 A Yes, he was.

20 Q Did you explain to him what was going to be
21 happening?

22 A Yes, I read lineup instructions to him.

23 Q Prior to you actually speaking to him right before
24 the lineup, did you tell him why he was coming to the
25 precinct when you contacted him?

Det. Batanjany - People - Direct/Ms. Chu

1 A The only thing I had mentioned, to view a lineup
2 and I would explain to him when he got to the precinct.

3 Q Other than that, you didn't mention anything else
4 about the lineup?

5 A No.

6 Q Once you went into the room to get him to view the
7 lineup, what did you tell him?

8 A I explained the lineup instructions. I basically
9 read off the forms that were provided by the N.Y.P.D.

10 Q What did you tell him?

11 A The lineup form basically states he will be viewing
12 a lineup, he will view it through a two-way glass, two-way
13 mirror/glass, that he can see into the room, that they cannot
14 see out to him. I explained to him that there was going to
15 be six people inside, they would each be holding a number,
16 not to assume that I knew who the suspect was or to assume
17 that I knew anything about the lineup, nor to look to me for
18 any questions about it.

19 At that point I would ask him, after he viewed the
20 lineup, two questions, one would be if he can identify
21 somebody, if so which number are they holding, and what does
22 he remember that person from, then the lineup would be
23 concluded.

24 Q Okay.

25 Did you read him those instructions that you just

Det. Batanjany - People - Direct/Ms. Chu

1 described for me?

2 A Yes.

3 Q Did you then take Mr. Shepard into the area where
4 he viewed the lineup?

5 A Yes, I did.

6 Q Did he have any questions for you based upon the
7 instructions you gave him initially when you were in the RAM
8 (sic) unit with him?

9 A No, I did not.

10 Q Once he got to the area where the lineup was being
11 held, can you tell me, the window that you described as being
12 that two-way glass/mirror, --

13 A Yes.

14 Q -- can you tell me, could you immediately see into
15 the room once you got there or did you have to indicate --

16 A No, we lift a shade. We shut the door so there is
17 no light in the room then we lift the shade up.

18 Q Did there come a time when the shade was lifted?

19 A Yes.

20 Q And did Mr. Shepard indicate that he recognized
21 anyone?

22 A Yes, immediately.

23 Q And did he tell you what position he recognized?

24 A Yes, he did.

25 Q What did he say?

Det. Batanjany - People - Direct/Ms. Chu

1 A He said number two.

2 Q And who was in position number two?

3 A Atara Wisdom.

4 Q Can you tell me, did he identify who he knew in
5 position number two, what that person's name was?

6 A Yes, he said that's Renee.

7 Q Now, after he viewed the lineup did you then take
8 him out of the viewing room?

9 A Yes, I did.

10 Q Where did you take him?

11 A I brought him back to the BRAM interview office.

12 Q Then, at that point, did you ask him any questions
13 about what he had just done?

14 A At that point I just had him sign the paperwork
15 that he did pick out position number two and that he had
16 stated that's Renee, he signed that form, then I told him
17 that it was over, that the lineup was over at this point.

18 Q Okay.

19 Did you then allow him to leave or did you take
20 him?

21 A We transported him back to his house.

22 Q Now, let me just ask you, what happened to the
23 fillers?

24 A After it was done, Detective Hernandez brought the
25 four fillers that were from a shelter back and the officer

Det. Batanjany - People - Direct/Ms. Chu

1 was let back into her office.

2 Q Okay, if I can just have the photos, please.

3 (Whereupon, the exhibits were handed to
4 counsel.)

5 MS. CHU: Thank you.

6 Q Now, you had mentioned there was an officer that
7 participated as a filler in this lineup?

8 A Yes.

9 Q Do you know what position she was in?

10 A She was position six.

11 Q If I can just have this -- I can put it up on the
12 screen. I will go through some other questions before to
13 sort of let this warm up.

14 Now, Detective, did you then begin to process the
15 defendant's arrest?

16 A Yes.

17 Q As part of this process -- I'm sorry.

18 During the time that she was at the precinct was
19 she allowed to go to the bathroom, eat anything, drink
20 anything?

21 A Yes, she was given numerous bathrooms breaks. She
22 had tea, water, cigarettes she requested, and Chinese food.

23 Q Okay.

24 Now, as part of the arrest processing did you get
25 what's known as pedigree information from the defendant?

Det. Batanjany - People - Direct/Ms. Chu

1 A Yes.

2 Q Can you explain to the members of the jury, what is
3 pedigree information?

4 A Just when you ask the defendant what their height,
5 weight, if they have any tattoos, age, stuff like that, date
6 of birth.

7 Q Okay.

8 And as far as the height and weight, do you
9 actually measure, like at a doctor's office, how much they
10 weigh and how tall they are?

11 A No, we do not.

12 Q You just get it from them, what their height and
13 weight is?

14 A Yes.

15 MR. WALENSKY: Your Honor, we will stipulate
16 to the fairness of the lineup.

17 THE COURT: Go ahead. Proceed. You can
18 proceed.

19 Q What age did she tell you she was?

20 A Twenty-five.

21 Q Now, as part of the arrest processing did you
22 also -- was a photograph taken of the defendant?

23 A Yes.

24 Q And can you tell me --

25 First I want to show you -- before I get to that I

Det. Batanjany - People - Direct/Ms. Chu

1 am going to show you People's 58A through D.

2 This is People's 58A.

3 (Whereupon, the exhibit was displayed.)

4 Q Can you tell us what we are looking at here?

5 A This is the first four people in the lineup.

6 Q Okay?

7 A The defendant is position number two.

8 Q Taking a look at People's 58B.

9 (Whereupon, the exhibit was displayed.)

10 Q What are we looking at here?

11 A That's three to six, the rest of the defendants
12 (sic).

13 Q You said which one, which number was the one that
14 was the officer?

15 A The officer is number six.

16 Q Okay.

17 Taking a look at People's 58C.

18 (Whereupon, the exhibit was displayed.)

19 A That's also a picture of the lineup.

20 Q Numbers one through what?

21 A It's two to six.

22 Q Taking a look at People's 58D.

23 (Whereupon, the exhibit was displayed.)

24 A That's the complete lineup, one through six.

25 Q Okay.

Det. Batanjany - People - Direct/Ms. Chu

1 Now, you had mentioned that there was a photograph
2 taken of her.

3 MS. CHU: I'd like to have this deemed
4 People's 59 and shown to the witness.

5 (Whereupon, the photograph was marked as
6 People's Exhibit 59 for identification.)

7 (Whereupon, the exhibit was handed to the
8 witness.)

9 Q Detective Batanjany, do you recognize what is being
10 shown to you?

11 A Yes. It is a photo of the defendant.

12 Q Does that photograph fairly and accurately depict
13 how the defendant appeared when she was with you on July 25th
14 of 2012?

15 A Yes, it does.

16 MS. CHU: At this time, your Honor, I would
17 offer it in evidence as People's 59.

18 THE COURT: Any objection?

19 MR. WALENSKY: No.

20 THE COURT: In evidence.

21 (Whereupon, the photograph was marked as
22 People's Exhibit 59 in evidence.)

23 Q What was the defendant -- I'm sorry.

24 What weight and height did the defendant give to
25 you?

Det. Batanjany - People - Cross/Mr. Walensky

1 A I'd have to view the lineup. Can I?

2 THE COURT: Yes.

3 (Whereupon, there was a brief pause in the
4 proceedings.)

5 A Height was five six, weight is 115 pounds.

6 MS. CHU: Okay.

7 Thank you very much. I have nothing further.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MR. WALENSKY:

11 Q Detective, this lineup -- excuse me.

12 Mr. Shepard was there to identify Atara Wisdom,
13 correct?

14 A Yes.

15 Q He wasn't a witness to the crime?

16 A No, he was not.

17 Q Or to the incident? He wasn't?

18 A No, he was not.

19 MR. WALENSKY: I have no further questions.

20 THE COURT: You may step down. Thank you.

21 THE WITNESS: Thank you.

22 (Whereupon, Detective Deborah Batanjany
23 stepped down from the witness stand and exited the
24 courtroom.)

25 THE COURT: Ms. Chu, do you have any further

Proceeding

1 witnesses or --

2 MS. CHU: Your Honor, I have three
3 stipulations defense counsel and I agreed upon.

4 THE COURT: Ladies and gentlemen, at this time
5 Ms. Chu is going to read into the record three
6 stipulations that have been entered into between the
7 Assistant District Attorney and defense counsel wherein
8 they agree upon certain facts, and you can take these
9 stipulations just like a witness's testimony and give it
10 the value you believe it warrants.

11 Proceed.

12 MS. CHU: Thank you.

13 The first is, the prosecution and the defense
14 have entered into the following stipulation:

15 Should Police Officer Christian Carlin have
16 been called by the prosecution, Police Officer Carlin
17 would have testified as follows:

18 He would have stated that he is employed by
19 the New York City Police Department in the 83rd Precinct
20 as a patrol officer.

21 He would have testified that on January 3rd
22 2000 --

23 THE COURT: Go a little slower.

24 MS. CHU: I'm sorry.

25 He would have testified that on January 3rd,

Proceeding

1 2012 he was working as a police officer assigned to the
2 83rd Precinct. That he was scheduled to work from 4:00
3 P.M. to midnight. That at approximately 4:00 P.M. he
4 was assigned to relieve P.O. Marsden from a scene at 832
5 Bushwick Avenue. That he remained at that scene until
6 he received property from Crime Scene detectives which
7 he vouchered as follows: DNA swabs marked SMA8 through
8 11 under voucher 3000013771, prescription pills bottle
9 SM5 and SM6 under voucher 3000013773, black sock marked
10 SM1, blue jeans with attached belt marked SM2, brown
11 long sleeved turtleneck marked SM3, white towel marked
12 SM4, and pink towel marked SM7 under voucher 3000013777.
13 That these items were then forwarded for testing.

14 The second stipulation is as follows:

15 The prosecution and the defense have entered
16 into the following stipulation:

17 Should Amy Dorsey have been called by the
18 prosecution, Ms. Dorsey would have testified as follows:

19 She would have stated that she is currently
20 employed by the New York City Police Department
21 Laboratory and was formally assigned to the Latent Print
22 Development Unit and has received extensive training in
23 the area of latent print development and in the
24 collection of DNA, she has conducted thousands of
25 examinations for the trace evidence and taking of DNA

Proceeding

1 swabs. She would have testified that in connection with
2 this case she received a sealed container vouchered
3 under voucher number 3000013773 that included
4 prescription pill bottles marked SM5 and SM6. That she
5 examined this evidence and collected DNA samples for
6 further testing by the Office of the Chief Medical
7 Examiner Forensic Biology Department. That she swabbed
8 the cap ridge and exterior of the Seroquel bottle, which
9 were marked lab numbers 6.3 and 6.4 respectively. In
10 addition, she swabbed the cap ridge and the exterior of
11 the Fluoxetine bottle, which were marked lab number 7.2
12 and 7.3 respectively. That she vouchered these swabs
13 under voucher Z00004877, that these items were then sent
14 to the Office of the Chief Medical Examiner Forensic
15 Biology Department for examination.

16 The third stipulation is as follows:

17 The prosecution and defense have entered into
18 the following stipulation:

19 Should Detective Investigator Iris Ortiz have
20 been called by the prosecution, Detective Ortiz would
21 have testified as follows:

22 She would have stated that she is currently
23 employed by the Kings County District Attorney's Office
24 as a detective investigator. That she has been employed
25 as a detective investigator for approximately 14 years.

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1 That she has received extensive training in the area of
2 the collection of DNA, she has collected hundreds of DNA
3 swabs.

4 She would have testified that in connection
5 with this case she was assigned to obtain the buccal
6 sample from the defendant, Atara Wisdom. That on May
7 6th, 2013 she met the defendant, Atara Wisdom, and
8 collected a DNA swab from the inside of her cheek. That
9 after obtaining said sample, she sealed and vouchered
10 the sample and had it forwarded to the Office of the
11 Chief Medical Examiner Forensic Biology Department for
12 examination under voucher number R490270.

13 THE COURT: What is her name, again?

14 MS. CHU: Iris Ortiz.

15 THE COURT: All right.

16 Do you have any other witnesses at this time?

17 MS. CHU: No, I do not. The People rest.

18 THE COURT: Okay.

19 You reserve your motions at this time?

20 MR. WALENSKY: Yes, your Honor.

21 THE COURT: All right.

22 Does defense have any witnesses before we
23 proceed?

24 We are going to take a short recess, ladies
25 and gentlemen. Again, do not discuss the case among

Proceeding

1 yourselves or with anyone else. Just leave your books
2 there. We will take a very, very brief recess.

3 Take the jury out.

4 (Whereupon, the Jury exited the courtroom.)

5 THE COURT: All right, you may make your
6 motion at this time. And, also, do you have any
7 witnesses at this time?

8 MR. WALENSKY: No, your Honor.

9 We spoke with Ms. Wisdom, and based upon the
10 testimony we heard this morning we've decided, and she
11 has decided not to testify. We felt that was a very
12 strong witness for Ms. Wisdom.

13 THE COURT: All right.

14 Ms. Wisdom, do you understand that you have a
15 right to testify in this matter and that right is your
16 right and your right alone? In other words,
17 notwithstanding any advice given to you by counsel, you
18 can testify if you so wish. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: And now I've been told that --
21 earlier you said you wanted to testify, is that correct?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: And I've been informed by your
24 counsel that you now do not wish to testify. Is that
25 correct?

Proceeding

1 THE DEFENDANT: Yes.

2 THE COURT: Are you giving up your right to
3 testify voluntarily and of your own free will?

4 THE DEFENDANT: Yes.

5 THE COURT: Anybody force or coerce you to
6 give up that right?

7 THE DEFENDANT: No.

8 THE COURT: Okay.

9 You want to make your motion at this
10 particular time?

11 MR. WALENSKY: Yes, your Honor.

12 People have failed to prove a prima facie case
13 in this instance, and often these motions are pro forma
14 but in this case it is not. The evidence they put
15 forward is that Anthony Wilson was killed and he was
16 stabbed seven times. His blood was found at the scene,
17 which is his apartment. The separate blood was found in
18 the bathroom, the blood of Ms. Wisdom. The apartment
19 was in disarray. The only evidence they have is a 911
20 tape saying something to the effect of this woman is
21 crazy, you've got -- I want her out of my house. Absent
22 that, the only testimony you have is Ms. Wisdom's
23 statement where she's saying that she was being
24 attacked, he said I'm going to get some pussy tonight,
25 hit her several times and she defended herself and then

Proceeding

1 left the apartment. She's not charged with anything but
2 murder in the second degree. The People put on Matthew
3 Shepard whose purpose was to be a third person
4 admission. What we really had from Matthew Shepard was
5 outcry, yes, because he said she wasn't going to fuck
6 him and pay him rent. But she said to him -- yes, she
7 said, he tried to force himself upon her, which is rape
8 and because of that, that is an outcry. So you really
9 have consistency with the fact of her not being guilty
10 of this. But more than that, you certainly don't have
11 issues where this would be beyond a reasonable doubt for
12 a jury to consider.

13 You have granted the charges of circumstantial
14 evidence and justification, and in circumstantial
15 evidence, as the Court knows, the circumstances must be
16 so strong as to flow into pretty much one conclusion.
17 What we have here is entirely speculative. It could
18 have happened this way, it could have happened that way.
19 There is no corroboration for any theory the People
20 could put forward. That is one of the problems that
21 they have failed to overcome.

22 Secondly, we have justification, and under
23 35.15 2B a woman has the right to defend herself with
24 deadly force if she reasonably beliefs she is being
25 raped.

Proceeding

1 Here she was hit, it was -- Mr. Shepard
2 testified that he saw that she had some swelling around
3 the eye, which is consistent with having been hit in the
4 face, we have her saying she was upset and that she
5 asked to return to check upon him.

6 All of those things show, that aside from
7 regret or anything else, there is just nothing to
8 substantiate the crime of intentional murder in the
9 second degree. Even if there was an immediate intent at
10 that point, she was entitled under the circumstances to,
11 and justified, to use the force necessary to prevent the
12 completion of that rape.

13 So, for those reasons I move that the charge
14 against her of murder in the second degree, difficult
15 though I know this is, be dismissed.

16 THE COURT: People?

17 MS. CHU: Your Honor, I believe there is
18 sufficient evidence that has been presented to this jury
19 that makes out a prima facie case. The fact that she
20 might have told Mr. Shepard during her stay with him or
21 trying to convince him to allow her to stay in his
22 apartment is of no consequence. The fact of the matter
23 is she admitted that she stabbed him because she wasn't
24 going to pay him rent and have sex with him. For those
25 reasons, in addition to the 911 tape and the fact that

Proceeding

1 the forensic evidence doesn't support what her claim is,
2 the People believe that we have proven -- I'm sorry --
3 made out a prima facie case and we oppose the motion.

4 THE COURT: You are not putting on any
5 witnesses?

6 MR. WALENSKY: No, your Honor.

7 THE COURT: Do you want to make your motion to
8 dismiss at the close of the case now?

9 MR. WALENSKY: Yes, your Honor.

10 THE COURT: Same reasons?

11 MR. WALENSKY: For the same reasons, yes.

12 Additionally, one last response.

13 Forensically, the forensic evidence does not
14 support the People's contention. What we have here is a
15 man who's, ultimately, naked on the bed but we have his
16 clothing on the floor with feces mixed with blood. We
17 have one side of the apartment where Ms. Wisdom said
18 that he had attacked her near the kitchen and the
19 refrigerator, with a knocked-over table and the counter
20 space over there, and then we have lots of blood on the
21 table next to the bed which shows -- and that was the
22 decedent's, Mr. Wilson's blood -- which shows he had
23 moved over there at that particular time. So, there was
24 a scuffle on one side, he goes to the other and the
25 forensics really show he pulled down his pants because

Proceeding

1 there wouldn't be excrement on the floor, there wouldn't
2 be what appeared to be urine stains to the ME on the
3 pants. So, something happened and we don't know what
4 and it doesn't -- it certainly cannot support any
5 verdict of guilt beyond a reasonable doubt.

6 This is all speculative, frankly, from both
7 sides. No one really knows what happened, and that's
8 the question here. To let this case go to the jury, a
9 case that is speculative at the outset, I think would be
10 wrong. So, for those reasons I move that the case be
11 dismissed.

12 THE COURT: You object on the same grounds?

13 MS. CHU: I object. Your Honor, there was
14 sufficient evidence to put before the jury. They need
15 to make a decision as to what happened here.

16 THE COURT: All right.

17 Before I bring in the jury, counsel had made
18 an application yesterday during their charge conference
19 to submit the outcry, definition of outcry. In light of
20 the evidence I am going to do that, all right.

21 MS. CHU: In addition to that, your Honor, I
22 know also yesterday that Mr. Walensky had indicated that
23 he did not wish to ask for manslaughter in the first
24 degree as a lesser included of the murder two but the
25 People are asking that the Court submit that because

Proceeding

1 there is a reasonable view of the evidence that could
2 support that although she was acting in self defense,
3 she didn't really intend to kill, seriously injury him.

4 THE COURT: With seven stab wounds? I will
5 deny that application.

6 MR. WALENSKY: Your Honor, my request -- are
7 we summing up after lunch? If we are going to sum up
8 before, I want to get things ready, the photographs, the
9 video. I don't want the jury -- I don't want to be in a
10 position to have to wait a few minutes.

11 THE COURT: How long is your summation?

12 MR. WALENSKY: Probably 30 or 40 minutes, but
13 I might be more. I am going to play some of the video,
14 I'm not sure how much.

15 THE COURT: What we'll do, we'll adjourn at
16 this time but we'll commence with the summations at two
17 o'clock, all right?

18 MR. WALENSKY: That is fine.

19 THE COURT: All right.

20 Bring in the jury, please.

21 Bring the jury in.

22 COURT OFFICER: Jury entering.

23 (Whereupon, the Jury entered the courtroom.)

24 THE CLERK: All members of the jury are
25 present and seated.

Proceeding

1 Do both sides waive the roll call?

2 MR. WALENSKY: So waived.

3 MS. CHU: Yes.

4 THE CLERK: Thank you.

5 THE COURT: Mr. Walensky, do you have any
6 witnesses?

7 MR. WALENSKY: Your Honor, the defense rests.

8 THE COURT: And, Ms. Chu, do you rest --

9 MS. CHU: Yes.

10 THE COURT: -- at the conclusion of this
11 matter --

12 MS. CHU: Yes.

13 THE COURT: All right, ladies and gentlemen,
14 I'm going to adjourn for the -- I am going to have this
15 matter adjourned until two o'clock for the presentation
16 of the summations and the charge, so I'm going to ask
17 you to go to lunch and then return no later than two
18 o'clock so we can start on time.

19 And do not discuss the matter amongst
20 yourselves or with anyone else. Do not visit the place
21 or places where the alleged crime occurred. Have no
22 contact with any of the parties involved in this matter,
23 including the Court. And do not resort to utilizing any
24 digital devices for the purpose of obtaining any
25 information regarding this matter or contacting anyone

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1 about this matter.

2 Have a very good lunch and see you at two
3 o'clock. Just leave your books on your seats.

4 Thank you.

5 (Whereupon, the Jury exited the courtroom.)

6 THE COURT: All right, this matter is
7 adjourned to two o'clock for summations. So, court is
8 adjourned until 2:00 P.M.

9 Thank you.

10 Do you want a no inference charge?

11 MR. WALENSKY: Yes, I do.

12 Thank you.

13 THE COURT: Thank you.

14 All right, two o'clock.

15 (Whereupon, a lunch recess was held.)

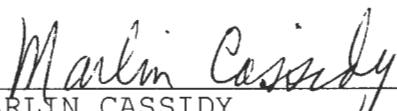
16 * * *

17 A F T E R N O O N S E S S I O N

18 * * *

19 (Whereupon, subsequent trial proceedings were
20 stenographically recorded and transcribed separately.)

21 *****
22 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
23 THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
24 PROCEEDING.
25


MARLIN CASSIDY
Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART 2
-----X

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 ATARA WISDOM,

6 Defendant.

-----X

7 Supreme Courthouse
8 320 Jay Street
9 Brooklyn, New York 11201
July 9, 2014

10 B E F O R E:

11 THE HONORABLE ALBERT TOMEI, JUSTICE
12 (And a Jury)

13 A P P E A R A N C E S:

14 HON. KENNETH P. THOMPSON, ESQ.
15 District Attorney - Kings County
16 350 Jay Street
17 Brooklyn, New York 11201
BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

18 DAVID WALENSKY, ESQ.
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20 910 Stuart Avenue
Mamaroneck, New York
BY: DAVID WALENSKY, ESQ.
- and -
21 JOSHUA POVILL, ESQ.

22

23

24

25

MARLIN CASSIDY
Senior Court Reporter

Proceeding

1 (Whereupon, the following took place in open
2 court:)

3 THE CLERK: Come to order, Part 2 is back in
4 session.

5 THE COURT: All right, get the jury.

6 MS. CHU: Your Honor, I'd like to address the
7 Court.

8 THE COURT: Go ahead.

9 MS. CHU: I want to wait for defendant.

10 SERGEANT: Bring her out.

11 THE CLERK: Case back on trial continues. All
12 parties present. Defendant is present with her
13 attorney.

14 MS. CHU: Your Honor, I know before we left
15 for the break we were talking about you adding a charge
16 for outcry concerning what Mr. Matthew Shepard said.
17 People would like to renew my application to oppose that
18 and not have that charge read to the jury for the
19 following reasons:

20 First off, according to the phone records that
21 are in evidence that are made from the defendant's
22 record, Matthew Shepard is not the first person, she
23 speaks to several people during the hours about
24 12:50-something to about five o'clock when she actually
25 called Matthew Shepard, and those are documented, the

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1 actual phone calls, meaning they got through, they were
2 actually talking to each other according to the witness
3 that testified for Sprint, that they were long enough
4 minutes or long enough seconds in time to know there was
5 actually a voice call made.

6 In addition to that --

7 THE COURT: I don't understand the
8 significance of that with respect --

9 MS. CHU: The significance of that,
10 immediately after it happens she doesn't -- she is not
11 talking to Matthew Shepard, she is talking to a whole
12 bunch of other people.

13 THE COURT: We don't know what she said to
14 those other people.

15 MS. CHU: She could outcry and she's not
16 outcrying to them. The fact of the matter is, even if
17 you take Matthew Shepard, that she tells about it, the
18 first thing she says to him is not that he had tried to
19 rape me and that I had to poke him, she says, I'm not
20 going to have sex with him and pay him rent, so I poked
21 him. That was what she first said to him. It wasn't
22 until after she was at his house already that she told
23 him she couldn't stay there. Now she is telling him it
24 was an excuse.

25 THE COURT: You can make that argument to the

Proceeding

1 jury.

2 MS. CHU: I don't think --

3 THE COURT: The fact of the matter is, based
4 upon the evidence, that it should be given, okay.

5 MS. CHU: Note my exception on the record.

6 THE COURT: Let's get the jury out.

7 MS. CHU: Your Honor, how do these stips. go
8 in, are they Court exhibits when they go in or are they
9 mine?

10 THE COURT: Well, they're in the record.

11 Come on up.

12 There's not much to the verdict sheet.

13 (Whereupon, a sidebar conference was held off
14 the record.)

15 THE COURT: Bring in the jury, please.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the Jury entered the courtroom.)

18 THE CLERK: All jurors are present and seated.

19 Both sides waive the roll call?

20 MS. CHU: So waived.

21 MR. WALENSKY: Yes.

22 THE COURT: Ladies and gentlemen, the
23 attorneys are going to present their summations to you.
24 In effect, what the attorneys are going to do is review
25 the evidence or lack of evidence in this case and in

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1 doing so ask you to draw certain inferences from that
2 evidence and ultimately support their position in this
3 matter.

4 Now, please understand that a trial is not a
5 contest between the attorneys. The style, the
6 personality of an attorney, must not affect your
7 verdict.

8 Additionally, you are not to speculate on
9 matters outside of the evidence. Please understand that
10 whatever the lawyers say in summation is not evidence,
11 rather, they will be making arguments based on their
12 memory of the evidence. However, as I shall explain in
13 my charge, it is not their memory or analysis of the
14 evidence that controls, it's yours.

15 Now, sometimes a lawyer will become a bit
16 overzealous and use expressions like: "I know," "I
17 think," "I believe," "I'm sure," the evidence strikes me
18 as, "my view is," or "I tell you that." If a lawyer
19 slips and uses such an expression, he or she doesn't
20 mean it because you have already heard and seen all the
21 evidence in this matter. And if this lawyer were to use
22 one of those expressions, that lawyer would be
23 expressing or giving you additional evidence. That
24 lawyer's personal view, however, isn't important anyway
25 because it's your view that counts.

Summation - Defendant/Mr. Walensky

1 Now, our law doesn't allow a lawyer to give
2 their personal opinion. If one of the lawyers slips in
3 an excess of zeal, I should say, and does use one of
4 these expressions, just translate it into what is really
5 meant, such as "I submit to you, that based on the
6 evidence such and so follows."

7 We will proceed at this time.

8 Mr. Walensky.

9 MR. WALENSKY: Thank you, your Honor.

10 Ladies and gentlemen, I want to thank you for
11 your attention. This is a difficult case. As you know,
12 anytime somebody's lost their life and anybody's on
13 trial for an incident -- I call it "an incident" because
14 it will be up to you to decide whether this was in fact
15 a crime.

16 Now, you're only going to have to consider one
17 charge and that one charge is Murder in the Second
18 Degree. I read it to you in voir dire.

19 There's a certain circuitousness to this, we
20 ask questions in the beginning when we are selecting a
21 jury, you hear the evidence, then we come to the
22 summations.

23 Well, as I brought out and I spoke to some of
24 you, but not a lot of you, the People have to prove
25 beyond a reasonable doubt that Atara Wisdom intended to

Summation - Defendant/Mr. Walensky

1 kill Anthony Wilson. And in this particular case
2 there's a defense. Colloquially most people would call
3 it self defense, but here in court it's called
4 justification. And the Judge will tell you how you view
5 the evidence because there's a difference in the
6 justification charge. Her ability to defend herself,
7 legally that occurs when somebody tries to rape
8 somebody.

9 I'm not about to tell you it, the Judge is the
10 rule of the law, the arbiter of the law, but I can tell
11 you that there is a specific instruction regarding
12 whether Ms. Wilson -- Ms. Wisdom is justified in using
13 the force that was used and what a reasonable person
14 would think at that time.

15 Now, there's probably few more things
16 terrifying for a woman than a man trying to rape her.
17 And the evidence we have here shows that in fact Anthony
18 Wilson did assault her and that what we have supports
19 the contention.

20 Now, in this country there's an evolution of
21 law. Sometimes we hear about people saying we want to
22 know what the founders intended the law should be, how
23 it was when the constitution first started. But when we
24 first had the birth of this country with the
25 constitution, African-Americans were slaves and then

Summation - Defendant/Mr. Walensky

1 when that was changed they still weren't allowed the
2 vote.

3 MS. CHU: Objection, your Honor.

4 THE COURT: Sustained.

5 Please stick to the evidence or lack of
6 evidence in this case, all right, we don't need a
7 history lesson. Let's go.

8 MR. WALENSKY: Well, what has happened is the
9 rights of women have been recognized.

10 MS. CHU: Objection.

11 THE COURT: Sustained, counsel.

12 MR. WALENSKY: Yes, your Honor.

13 So we come into the evidence in this case.
14 And how is it supported?

15 Where are the photos, Sergeant?

16 COURT OFFICER: You are asking for the photos?

17 MR. WALENSKY: Yes, please, may I have the
18 photos?

19 Just give it to me the way they are. I
20 prearranged them.

21 I will just take them.

22 Fine.

23 (Whereupon, the exhibits were handed to
24 counsel.)

25 MR. WALENSKY: Thank you.

Summation - Defendant/Mr. Walensky

1 There's a lot of evidence in this case that
2 calls for speculation, and if you find yourself in the
3 jury room saying, maybe it happened this way or maybe it
4 happened that way, then you must acquit 'cause that's
5 certainly not proof beyond a reasonable doubt. If you
6 start sitting there and saying, well, this happened but
7 it could have been this way or it could have been that
8 way, then you must acquit because that is not evidence
9 beyond a reasonable doubt.

10 Can you play -- Ms. Chu, would you play the
11 911?

12 (Whereupon, the exhibit was played in open
13 court.)

14 MR. WALENSKY: Thank you.

15 You very well may hear it again. And anything
16 that is evidence, all of these photos, all of these
17 recordings, the video statement of Ms. Wisdom, you are
18 free to hear at any time. Any testimony that you've
19 heard can be read back to you and rather than -- I mean,
20 I saw people taking notes and, frankly, if you can have
21 the testimony read back to you, it's far better than any
22 notes that somebody is taking because then you are
23 getting the direct testimony.

24 Now, that 911 tape, what do we know about it?

25 We know that Anthony Wilson at some point in

Summation - Defendant/Mr. Walensky

1 time that night is asking whether -- is asking -- is
2 saying, This woman is crazy, I have to get her out of my
3 house.

4 When did it happen?

5 We know the call was made about 12:37 A.M.,
6 his phone is then used about 12:57, one o'clock.

7 Now, did it happen before this event where
8 she's -- remember, according to the only evidence we
9 have, Atara's statement, that she was sleeping. He
10 went out, she came in, he went out, he came back again,
11 he might have awakened her and said, you know, or she
12 felt him touching her and she's like get away from me
13 and he's going crazy and going you have to get this
14 woman out of my house. She might have stabbed him
15 already.

16 MS. CHU: Objection. It's speculation.

17 MR. WALENSKY: Exactly, this is all
18 speculation.

19 THE COURT: Objection is sustained. It's not
20 what the attorney says that is evidence, it's your
21 recollection of the facts in this case as to what the
22 evidence is.

23 Proceed.

24 MR. WALENSKY: What I'm bringing to you,
25 ladies and gentlemen, is exactly that, it's speculation.

Summation - Defendant/Mr. Walensky

1 The entire thing is speculation. You don't know. You
2 know just you have that call, you don't know anything
3 else about it. You don't know if he's been stabbed then
4 says you have to get this lady out of here now.

5 Somebody might say, you stabbed me, I've been stabbed.

6 Now, let's talk about Anthony Wilson. Pretty
7 decent fellow, he has family here, Miss Wisdom has
8 family here.

9 MS. CHU: Objection, your Honor.

10 THE COURT: Sustained.

11 MR. WALENSKY: It's tragic.

12 THE COURT: The jury is to disregard that
13 statement, all right.

14 Proceed.

15 MR. WALENSKY: He is a pretty decent fellow,
16 apparently, except when he drinks and when he gets
17 high.

18 MS. CHU: Objection.

19 MR. WALENSKY: That was testified to on the
20 video by Miss Wisdom.

21 THE COURT: Ladies and gentlemen, you are the
22 best judge of what the evidence shows, so that
23 determination rests, resides with you.

24 MR. WALENSKY: Now, Ms. Wisdom told you in her
25 statement, which has been uncontradicted, that, you

Summation - Defendant/Mr. Walensky

1 know, I got along with him pretty well and a couple of
2 times he tried to come on to me, I said get away.

3 She's twenty-five, he's around fifty, she is
4 not interested in that.

5 She's staying there, needs a place to stay and
6 contributes a little bit, not a lot. He let's her stay.

7 In her statement she is saying to him, you
8 know, keep away from me. He is pretty good but when he
9 drinks, when he gets high, he changes, he's a different
10 man.

11 I submit, and on this evening his alcohol at
12 the time of death was almost three times, at least two
13 and a half times the legal limit. He was drunk. He had
14 residue of cocaine use. He had the byproducts of his
15 cocaine use in his blood. He was stoned, he was drunk,
16 and he wanted to get some.

17 Now, if you examine the phone records of
18 Anthony Wilson, you'll see that he called, made several
19 calls from about 8:40 on and he called certain numbers
20 multiple times, he had a conversation with a couple of
21 people. Of course we don't know whether he's trying to
22 get a date, talk to a friend. But he gets home and
23 Atara Wisdom's there, and she's a young woman and he's
24 drunk and he's out of it. It's a small room. And he
25 says, I'm going to get some pussy tonight. And she gets

Summation - Defendant/Mr. Walensky

1 up and she goes to leave and it's, uh-uh, it's going to
2 be you.

3 MS. CHU: Objection. That's not what she said
4 on the video.

5 THE COURT: It's the jury's recollection that
6 counts.

7 MR. WALENSKY: I am summarizing.

8 And, so, watch the video, rather than sit here
9 for half an hour in summation and play this entire video
10 for you, ladies and gentlemen, I may characterize. I
11 urge you to watch the video again. I will probably play
12 some of it.

13 So let's go over the evidence.

14 You see there's a lot here, this collection of
15 evidence, but there's no evidence that points to Atara
16 Wisdom intentionally killing Anthony Wilson in a
17 criminal way. It's a collection of DNA, it's a
18 collection of evidence, and then it's like, well,
19 doesn't it look like this, or doesn't it look like that.
20 If, again, you're saying "well, maybe," then you must
21 acquit because then what you're doing is you're trying
22 to put it together, you're trying to speculate.

23 Now, there's a criminal charge. We call them
24 "charges," it's really an instruction that the Judge
25 will read to you regarding circumstantial evidence and I

Summation - Defendant/Mr. Walensky

1 urge you -- the Judge will read you these instructions
2 at the close, when he says it's a jury charge, and it
3 gets boring, it's boring for everybody at times. And
4 the Judge will reread these instructions to you if you
5 ask. And what I am urging you to do, if even one of you
6 hasn't really heard it, come back and listen because the
7 charge for justification is all important.

8 And the People's case is a circumstantial
9 evidence case, there is no real direct evidence, there
10 is no witness to say I saw Atara Wisdom do this or I saw
11 this happen, I heard about it, there's none. If you go
12 back there and look at the evidence, you don't have any
13 statements, you don't have anything.

14 So circumstantial evidence is very strong.
15 The Judge will tell you exactly what it is. But,
16 essentially, viable reasons why she -- that point to
17 non-guilt, then you have -- you have to acquit her, he
18 will tell you, you must acquit her.

19 So I am asking you regarding these
20 instructions for circumstantial evidence, for
21 justification, she's justified as a reasonable person in
22 acting the way she did under the circumstance that
23 night, at that time, and you must acquit her.

24 The Judge will also give you an instruction
25 for outcry. That is, if somebody attempts to rape

Summation - Defendant/Mr. Walensky

1 somebody or sexually abuse them, there is an instruction
2 how a person can outcry. Look at that as evidence, her
3 outcry. She tells somebody about it, he tried raping
4 me.

5 Now, it's a terrifying thing when a woman
6 faces somebody and can't get away.

7 We have the home (indicating). This is the
8 outside of the apartment of Mr. Wilson (indicating).

9 Now, Ms. Chu asked several witnesses, was this
10 a nice, neat apartment. She asked the landlord who
11 really hadn't really been there, maybe once, fine, neat.
12 She asked Ms. Fortune. And, in fact, she asked Ms.
13 Fortune, she came that one time. I submit, she came one
14 time, this is my friend, she was seeing him in that
15 manner. There is no evidence that she was his
16 girlfriend. Some sort of fight? Again, it would be
17 speculation. This woman comes over when he couldn't
18 come, and he wasn't coming out that night.

19 But what we do have here is the apartment and
20 the physical evidence will support what I am saying.
21 And, again, if you say, well, maybe it happened this
22 way, maybe it happened another way, you must acquit.
23 Maybes aren't beyond a reasonable doubt. Maybes aren't
24 even close to beyond a reasonable doubt.

25 We see here a view of the kitchen

Summation - Defendant/Mr. Walensky

1 (indicating). No, it's a view of the kitchen.

2 MS. CHU: What number is it? What number is
3 it?

4 MR. WALENSKY: Six.

5 Looking down the opposite end of the apartment
6 from where the bed is, and this is knocked over and it's
7 bloody and the table is knocked over and it's bloody and
8 the floor is bloody and this runs into -- we see how
9 small it is 'cause here's a table next to the bed, here
10 are the pants (indicating).

11 Now, Atara tells you that she was walking
12 around that way to get her stuff. There's a ledge where
13 there's this stuff (indicating), she is walking around
14 and he prevents her from getting out.

15 Here's the door (indicating). Things happened
16 here (indicating).

17 And if you recall, Ms. Chu in her opening
18 statement -- and if I am wrong, it's your
19 recollection -- was intimating, because Ms. Wisdom in
20 her statement said I was bent over and going
21 (demonstrating), he was grabbing me, but then -- Mr.
22 Povill, can you stand up, come over here? -- but then
23 she said, I got up and he was holding me, he hit me a
24 couple of times.

25 We know from Matthew Shepard her face was

Summation - Defendant/Mr. Walensky

1 swollen.

2 And he is a bit taller than the defendant.
3 Mr. Shepard is five nine according to the ME and Ms.
4 Wisdom is five six. Mr. Povill is about six feet tall.

5 MR. POVILL: Five eleven.

6 MS. CHU: Objection.

7 THE COURT: Sustained.

8 MR. WALENSKY: He is a little bit taller, I
9 submit, and she is stabbing, he is grabbing her and he
10 stabs her, and you'll see --

11 THE COURT: And "he" stabs her or "she?"

12 MR. WALENSKY: I'm sorry. She stabs him.

13 And as the ME said, it happened quickly, it's
14 close in succession.

15 What does it show?

16 It shows a pattern, doesn't show a deliberate
17 like we see a psycho or something, it's a quick thing.

18 Thank you.

19 So what we have are the wounds. And these are
20 the wounds, ladies and gentlemen (indicating). And
21 there's one that doesn't go in very deeply in the back.

22 I submit, he goes away, and you know he's
23 going quickly and he moves away from her and that's just
24 a skimming kind of cut, move, it's not a deep thing.

25 Everything is right here and it conforms to

Summation - Defendant/Mr. Walensky

1 the theory of she's grabbing him.

2 And when did she stop stabbing him?

3 When he let her go and moved away, because as
4 you know from the Medical Examiner, there are no
5 defensive wounds. This isn't someone comes at you with
6 a knife like this (demonstrating), you go like that and
7 I'm holding-- for the record, I am holding my hands up
8 in front of my face -- where you would expect to get
9 cuts on your forearm or on the hand or somebody grabbing
10 for it and getting cuts in the hand.

11 Everything is straightforward, and I submit to
12 you that if she suddenly struck out, quick one or two,
13 he would, if he was at all far from over, push her, put
14 his hand up, there would be some sort of defensive
15 wound, and there's nothing. And there is nothing
16 because he has her and he's loaded.

17 I can't stress this enough. You see it from
18 the only medical records. This man is drunk and he's
19 not feeling things as much.

20 You can use your own experience, but sometimes
21 people get drunk and you bang into something --

22 MS. CHU: Objection.

23 THE COURT: Objection sustained.

24 MR. WALENSKY: I submit to you, he wasn't
25 feeling it. And, when this happened, this doesn't

Summation - Defendant/Mr. Walensky

1 happen over a long period of time, this is a very quick
2 event. That's how she wants to get out.

3 He says, You are not going anywhere, he grabs
4 her and puts her sweater over her, she reaches for her
5 knife in the pocket, she said it's a sweater with a
6 pocket, and she starts to strike out. I think I cut him
7 in the legs. We don't know. Then she gets up and she
8 says, "I went," and she uses the thrusting motion up and
9 down to stab him. And it's hard, it's a deep wound, she
10 is undoubtedly very stressed, very panic stricken by
11 this.

12 So how did he get naked on the bed?

13 I submit to you, we know that all of the blood
14 and the DNA in the main room was from Anthony Wilson.
15 None of his blood was in the bathroom.

16 Now, there's blood around the kitchen and then
17 you have next to the floor, which as the officer said
18 looked liked feces and blood, and the Medical Examiner
19 was examining this, and she was guessing --

20 MS. CHU: Objection.

21 MR. WALENSKY: She doesn't know, they asked
22 for a guess, that is what the record says.

23 THE COURT: It's up to jury to make a
24 determination regarding what was the testimony regarding
25 this feces and blood.

Summation - Defendant/Mr. Walensky

1 MR. WALENSKY: Her words were, it looked more
2 like urine on the jeans.

3 I submit to you that this occurred, he's
4 stabbed, maybe calls 911, this woman's crazy, he isn't
5 feeling, maybe not. Again, maybe, maybe. She's in the
6 bathroom because it's her DNA alone that's in the
7 bathroom. We have these droplets on the wall. We have
8 something on the shower. We have the rag in the sink,
9 somebody cleaning themselves (sic) up, who probably cut
10 herself while this is happening.

11 MS. CHU: Objection.

12 THE COURT: Sustained.

13 MR. WALENSKY: It's her blood here
14 (indicating).

15 How did it get there?

16 We don't know.

17 It's not menstrual blood.

18 MS. CHU: Objection. That was not the
19 testimony.

20 THE COURT: Sustained.

21 MR. WALENSKY: There was a question whether it
22 was menstrual blood and --

23 THE COURT: Sustained.

24 MR. WALENSKY: Thank you.

25 So, this on the floor (indicating), I submit

Summation - Defendant/Mr. Walensky

1 to you, that he was dressed as Ms. Wisdom stated, when
2 this occurred, when this started happening. There was
3 apparently some semen found on the swab so there was
4 some sort of ejaculate, anticipatory, perhaps, we don't
5 know.

6 But here's a man who wanted sex, he's
7 wounded, and he drops his pants and he let's loose, his
8 bowels let loose, and the Medical Examiner said that
9 that can happen. Urine on the pants, he's peeing
10 because, I submit to you, he didn't know how badly he
11 was injured.

12 He is in a state of shock. He's stabbed, this
13 happened, it's sudden and people don't necessarily think
14 I'm dying, not like somebody shoots you, it's a cut, you
15 are not even feeling it for that moment, his adrenaline
16 was racing through his body so he drops this and drops
17 his pants, the phone call stops. He doesn't say I have
18 been stabbed or whatever, it's like hello, hello. We
19 don't know if he staggers, closes the phone. We don't
20 know if he just falls on the bed.

21 Regarding the bed itself, when we look at
22 this, these photos, it's all smeared. This is the table
23 next to the bed (indicating). There's blood here
24 (indicating). This is smeared over here (indicating).

25 How would it get there?

Summation - Defendant/Mr. Walensky

1 It's getting there from his walking around or
2 grabbing at something.

3 The fight didn't occur right at that point.

4 We have the pill bottles, the Seroquel and the
5 Prozac. The Seroquel -- one's an antidepressant, the
6 other the ME told you was classified -- we don't know
7 what it was used for, but it was classified as an
8 antipsychotic.

9 Now, this is on here (indicating) is not
10 because he is trying to take pills, I submit, but he is
11 grasping that bottle and just knocks them off. They are
12 on top of the table and he knocks it off the table.

13 And there's blood all around.

14 So, we have the shirt (indicating).

15 There's no evidence of knife wounds in the
16 shirt but there's evidence of the mess from the pants.

17 What you have here is a lot of questions.
18 There is nothing here.

19 Ms. Chu will get up and tell you her belief of
20 the evidence but, again, you have dueling beliefs. And
21 what's stronger or whatever, it's not that kind of
22 weight, maybe it's this, maybe it's that, it's not a
23 matter of choosing, it's what's the evidence, the
24 evidence gives you answers.

25 If you recall, I had told you in the beginning

Summation - Defendant/Mr. Walensky

1 that you may not be satisfied, you may not have an
2 answer, but we don't have to prove anything. People
3 have made a promise to you that they have to prove their
4 case beyond a reasonable doubt.

5 Now, that night, it's a fact, Anthony Wilson
6 was intoxicated, heavily intoxicated.

7 It's a fact Atara Wisdom went to the house.

8 Was she sleeping?

9 Maybe, maybe not. The only evidence you have
10 is her statement to the police.

11 Let's go over her statement.

12 Atara's taken into custody about seven months
13 later.

14 And why doesn't she go immediately?

15 She's afraid.

16 MS. CHU: Objection. That was not the
17 testimony.

18 THE COURT: Sustained.

19 MR. WALENSKY: I submit to you, my argument is
20 that, that --

21 THE COURT: Ladies and gentlemen, what the
22 attorney says or believes is not evidence, all right,
23 it's the facts that reflect the evidence.

24 MR. WALENSKY: That's fine, okay.

25 Now, she is taken into the precinct July 25th.

Summation - Defendant/Mr. Walensky

1 Officers go get her in the shelter, they bring her, they
2 put her into a room and it's a locked room. They call
3 it an interview room, it's an interrogation room. If
4 you can't come and go as you please, you're in custody.
5 And he said she wasn't arrested, technically, but she
6 wasn't free to go.

7 So they talk to her, they give her Miranda
8 rights at 11:00 A.M. maybe. There's nothing to
9 contradict that.

10 Now, we talk for about three hours.

11 And as you recall, I asked, what did you talk
12 about?

13 Well, we were investigating the death of Mr.
14 Wilson and we wanted to know what happened.

15 And I said, well, that takes five or ten
16 minutes. What were you talking about for three hours?

17 They were grilling her, and they were grilling
18 her and breaking her down. And the evidence of that is
19 when you look at that statement. When you look at her
20 in the beginning, this is a woman who's totally, to use
21 a colloquialism, fried, she's exhausted, she's tired,
22 she's been put through a wringer. A woman who says I
23 was raped is put through a wringer to elicit some sort
24 of confession, which doesn't come, what comes is a
25 statement.

Summation - Defendant/Mr. Walensky

1 Now, Ms. Chu in her opening stated, or voir
2 dire said, somebody is going to put it in the best
3 light. You be the judge of the statement. It's not a
4 bald faced statement, I submit to you. Use your own
5 judgment. She is so exhausted by that time, she's being
6 put through the wringer, she is not trying to fool
7 anyone.

8 I can't vouch for my witnesses anymore than
9 Ms. Chu could. You use your own judgment. You see what
10 happened.

11 But there are things that are hints as to how
12 willingly and willfully she was speaking at that point.

13 We have this, the statement. Well, it was a
14 written statement. We took it, you know, like by 2:00,
15 3:00 in the afternoon, then they have a lineup and the
16 lineup for Mr. Shepard is just to identify that he knows
17 who Atara Wisdom is. He knows nothing about what
18 happened at the place.

19 He has the fact that she says he tried to
20 force himself on her but we will get to Matthew in a
21 little bit.

22 I am going to try to talk to you without
23 putting all of you to sleep.

24 So what is interesting about this statement,
25 the officer said -- the detective said he wrote it out.

Summation - Defendant/Mr. Walensky

1 If you notice -- and he said he read it to her. She
2 read it. There is not one cross-out, there's not one
3 correction, it's signed.

4 When did he give it to her?

5 7:30 that night.

6 He talked to her about three o'clock or so,
7 and I submit, by 7:30, after everything else, when they
8 put this in front of her, she just signed it.

9 MS. CHU: Objection. There is no evidence to
10 support that.

11 THE COURT: Sustained.

12 MR. WALENSKY: This is my argument, your
13 Honor.

14 THE COURT: All right, you know what, I am
15 going to reverse myself. Let the jury make a
16 determination as to whether on that she was forced.

17 MR. WALENSKY: You look at -- look at what
18 happened during that period and what I -- perhaps this
19 was her statement, perhaps she didn't want to make one
20 correction, cross out one word, perhaps. Again, maybe.
21 If you're saying "maybe," you gotta acquit.

22 So that's 7:30.

23 And then we go to nine o'clock that night and
24 she makes a video statement.

25 Could you run this for a little bit?

Summation - Defendant/Mr. Walensky

1 We are not going to watch the whole thing.
2 We're not going to be a half hour.

3 (Whereupon, there was a brief pause in the
4 proceedings.)

5 MR. WALENSKY: Can we have the lights,
6 Sergeant?

7 Thank you.

8 (Whereupon, the exhibit was played in open
9 court.)

10 MR. WALENSKY: That's enough. We don't have
11 to see anymore.

12 Lights again, Sergeant.

13 Ladies and gentlemen, I played that so you can
14 look at her face and see how she was at nine o'clock
15 that night. She is exhausted. She's been put, as I
16 said, through a wringer, and then she had testified.
17 And I hope that you will watch it again.

18 If Ms. Chu doesn't play it for you, you do
19 what you like because that's the thing, you have total
20 freedom. When I started this, I said you have no bosses
21 ahead of you.

22 So what you do, look at the evidence. I urge
23 you to watch that because that's really the only
24 evidence in the case. Everything else is smoke and
25 mirrors. It's a collection, as I say.

Summation - Defendant/Mr. Walensky

1 Now we are talking about the kitchen and
2 blood.

3 And where is all the blood?

4 Well, this is a kitchen cabinet (indicating),
5 I believe. Blood on the floor here (indicating),
6 kitchen cabinet (indicating). Most of the bleeding
7 didn't even occur on the bed. If you look at the bed,
8 there's some bleeding there. Most of the bleeding
9 occurred down next to the bed. That's where he was.
10 And he falls on the bed and he may not even have been in
11 that position, we know from the officer. When he first
12 fell, we don't know.

13 Atara, I believe -- if I'm wrong in the
14 statement, correct me -- this happened, she runs to the
15 bathroom, doesn't hear anything, goes out. But we know
16 she runs into the bathroom afterward. There's a rag in
17 the sink, looks like there's blood, but that rag wasn't
18 checked. But near the bathtub it was checked and it was
19 her blood and near -- and on the door frame there were
20 droplets of her blood.

21 Now, of course, we don't know if it happened
22 that night because it's not absolute. My argument to
23 you is that it did happen that night.

24 The entire episode happened -- the actual
25 action probably took, his stopping her and fighting her

Summation - Defendant/Mr. Walensky

1 or whatever, probably took less than a minute.

2 MS. CHU: Objection, calls for speculation.

3 THE COURT: Sustained.

4 MR. WALENSKY: I know that the wounds happened
5 quickly if one is to believe the ME. Also, the Medical
6 Examiner testified that these wounds were not in and of
7 itself fatal. And on my questioning she said, well, I
8 don't know, it could have been a few minutes, it could
9 have been, you know, longer than that.

10 Ms. Chu, to draw it back out, I submit to you,
11 it was like, okay, you know, she sort of changed, she
12 doesn't know. The point is --

13 MS. CHU: Objection.

14 MR. WALENSKY: -- she doesn't know if it's a
15 few seconds.

16 THE COURT: Sustained.

17 Who are you talking about?

18 MR. WALENSKY: The Medical Examiner.

19 THE COURT: I thought you were talking about
20 Ms. Chu, all right. Just be specific.

21 MR. WALENSKY: I'm sorry.

22 The Medical Examiner didn't know if it was a
23 few seconds or a few minutes. She said deep wounds, he
24 could have lived a few minutes and maybe he died, but
25 they weren't quickly.

Summation - Defendant/Mr. Walensky

1 I submit, he wasn't killed instantly, that
2 seemed to be definite. And he could have lost
3 consciousness, maybe he didn't. Of course we're back to
4 maybe. We are back to maybe and maybe you don't know,
5 but the physical evidence you have is the clothing on
6 the floor, the naked body, because I submit to you, he
7 wasn't running around after her naked saying I'm getting
8 some. He started out -- he started out probably wanting
9 her to agree to it by rubbing her stomach, then she
10 goes, get away from me and he says, whoa, wait a minute,
11 I'm going to get some, so she acts, get away.

12 He goes back, and I submit to you that he's
13 wounded and then calls and is in shock. Now that might
14 have been what happened. To some people it might be
15 unbelievable. I submit, he was in shock, didn't feel or
16 know the exact number of wounds. Somehow though, his
17 clothes went down on the floor, somehow there's his own
18 feces on the floor, this blood is mixed in. Nobody came
19 in afterwards.

20 The People went through pains to show the
21 locked door. The door was locked when the landlord
22 came, no evidence that nobody else went into that
23 apartment. The place apparently didn't appear to be
24 burglarized, that it's pretty much untouched from the
25 time that this event occurred.

Summation - Defendant/Mr. Walensky

1 So after this happens, Ms. Wisdom, I submit
2 to you, leaves the bathroom and grabs the stuff, grabs
3 his phone, his keys, she tells you, his wallet. This
4 case isn't about who uses somebody's card or whatever.
5 The Judge gave you an instruction specifically. What
6 it's about was the narrative to show that she might
7 have had or somebody had his stuff afterwards. But,
8 again, we don't know who used his card and it doesn't
9 matter. She's only charged with what happened in that
10 apartment at that time. That's the only thing you're
11 going to have to consider, was she justified in acting
12 the way that she did when Anthony Wilson tried to rape
13 her.

14 So she goes out and she calls some people.
15 And you can look at the phone records, but they're
16 quick. And the Sprint rep is saying, well, some are
17 connecting, some aren't connecting. If you look,
18 they're very quick, even the one that might have
19 connected. It's 3:00 in the morning, I have to get out
20 of here, I have nothing to say to you. It's not a long
21 conversation.

22 She hooks up with Matthew Shepard in terms of
23 the phone, not what we say in slang, I mean. I mean,
24 Matthew Shepard -- and Matthew Shepard tells you that,
25 you know, I meet her on De Kalb Avenue. And I asked

Summation - Defendant/Mr. Walensky

1 specifically how she sounded. She sound stressed. And
2 she was stressed.

3 MS. CHU: Objection. That's not what he
4 said.

5 THE COURT: Sustained.

6 MR. WALENSKY: That's exactly what he said.

7 THE COURT: Ladies and gentlemen, again, it's
8 up to you, based upon the evidence or lack of evidence,
9 to make that determination.

10 MR. WALENSKY: Have his testimony read back,
11 ladies and gentlemen, if you so desire.

12 I submit that when she first called, on my
13 cross-examination I asked, was she stressed. He said
14 yes.

15 Now, Mr. Shepard was saying, I was just
16 interested, basically, in having sex. A woman calls me
17 at 5:00 in the morning, I'm such an attractive guy, and
18 so he goes and talks to her and he's not really even
19 listening to her, he says. He tells you, I'm not
20 listening.

21 He's been up all night, he's been in New
22 Jersey, it's 5:00 in the morning, he has a history of
23 getting high, we don't know whether he got high that
24 night.

25 MS. CHU: Objection. There is no history of

Summation - Defendant/Mr. Walensky

1 getting high. There is no testimony.

2 MR. WALENSKY: Actually, he said -- I asked
3 him.

4 THE COURT: Again, it's the jury's
5 recollection that controls.

6 Proceed.

7 MR. WALENSKY: So, I submit to you, and you
8 can hold me to it, that he says, yeah, I've had trouble
9 with drugs or something to that effect. He used drugs a
10 long time. He was up, apparently, all night, he was in
11 New Jersey somewhere, he came home at about 5:00 in the
12 morning, we don't know what kind of condition Matthew
13 Shepard was in, but he still wanted to try to sleep with
14 or have sex with Atara.

15 And she asked, can I go back to your house?

16 And he says okay.

17 She has her stuff, no place to go. He's
18 thinking, I'm going to get some.

19 And when they're talking she says, he is not
20 going to -- talking about Anthony Wilson to Matthew --
21 he is not going to get rent and have me sleep with him
22 too, so I poked him.

23 I submit, this is in the street, it's 5:00 in
24 the morning, it's hours later and she is upset and this
25 is what happened. It's not like, Hey, I'm not going to

Summation - Defendant/Mr. Walensky

1 give you sex, bang, bang, stabbing him. That's not what
2 happened. She is talking street talk to him, she is
3 angry, it's what happened.

4 She gets back into the house where she's a
5 couple of hours and he sees he is not getting sex and
6 she is then there, and I submit to you, among other
7 things, she said, when I asked him, Did she say he tried
8 to rape her? He tried to force himself and she is
9 upset. That makes sense.

10 You're allowed to use your own judgment in
11 this. I don't know what else was said, but you do know
12 that he, Matthew Shepard, said that Anthony Wilson tried
13 to force himself on her. And that is rape, that is
14 attempted rape.

15 When you tell -- when a man puts his arm
16 around you and you say no, that means no. When a man
17 starts to rub your stomach and you say get away from me
18 and push him away, that means no. When a man starts to
19 grab your clothes and put your sweater over your head
20 and hit you in the face, that's rape, that's attempted
21 rape, that's a sexual -- attempted sexual assault.

22 And I submit to you, that's what occurred that
23 night. And all this other stuff, we have to put it in
24 perspective of where and when.

25 And so what happens is that night after this

Summation - Defendant/Mr. Walensky

1 happens, doesn't matter if she grabs his phone, she is
2 making calls, she is calling friends or people,
3 undoubtedly people she knows, she's not calling
4 strangers, I think we can use common sense for that.
5 The only one that really picks up immediately with her
6 is Matthew Shepard who she tells this to. It's not a
7 strutting this man thinks he can get some sex from me
8 and I pay him rent, so I just poked him. That is just
9 an excited thing, he did this and I poked him.

10 She gets back and she is relaxed, she's more
11 relaxed but still undoubtedly upset, saying he tried to
12 force himself on me, because Matthew is not listening,
13 but he listened there, you know, what's really
14 significant, and then she wants him to go and check on
15 Anthony.

16 She doesn't know that he is dead at that
17 time.

18 MS. CHU: Objection. He didn't say she wanted
19 to check. He asked her --

20 THE COURT: Objection is sustained.

21 MR. WALENSKY: Excuse me, your Honor, we'll
22 let the record --

23 THE COURT: I will make the decisions and
24 determination. Objection sustained.

25 MR. WALENSKY: All right.

Summation - Defendant/Mr. Walensky

1 She asked him to go back with him, and he said
2 he didn't want to.

3 That's -- you can ask that be read back.

4 As I said, you can ask that Matthew Shepard's
5 testimony be read back in its entirety, if you want, or
6 cross, whatever you want.

7 I submit that's significant because, one, it
8 shows she didn't know what his condition was.

9 And, two, she wanted to find out or help him.
10 And if you're intentionally killing somebody, it's not
11 the action of somebody who's intending to kill somebody.
12 Even if you wanted to hurt him, she is not charged with
13 assaulting him. He's dead. She's not charged with
14 manslaughter, she's charged with intentionally wanting
15 to kill him at that time. And the defense, ladies and
16 gentlemen, is that she was justified because he was
17 trying to rape her.

18 When you look at the evidence, you're going to
19 have a lot of maybes in this. When you look at the
20 evidence, if you start to question and say I wonder if
21 maybe it's this, maybe it's that, what if. It's not
22 proof beyond a reasonable doubt. It takes more than a
23 911 phone call without any surrounding circumstances.
24 His death is not the surrounding circumstance as
25 regarding the causation of the death. There is a

Summation - Defendant/Mr. Walensky

1 difference here. We don't know what happened. We don't
2 know what happened before or after.

3 So there are -- I just want to leave you with
4 several things.

5 One, listen to the Judge's instructions. I
6 can't stress enough that his instruction regarding
7 justification really is at the heart of our defense,
8 it's one that she was entitled to act the way she did,
9 and the Judge will tell you what it is. Listen to it.

10 But two, which is about as equally important,
11 is circumstantial evidence, because if you look at the
12 evidence, it is circumstantial.

13 We've all heard about it. We watch detective
14 shows and things. The Judge will give you what the real
15 definition of circumstantial evidence is in this state
16 and I can tell you that it holds the People to a very
17 high standard.

18 MS. CHU: Objection.

19 THE COURT: Objection is sustained, all right.

20 MR. WALENSKY: Listen to the circumstantial
21 evidence charge. The People have to prove, in regard to
22 justification, they have to prove two things: One, that
23 she intended to kill Anthony Wilson. And two, that
24 under the circumstances, as a reasonable person, she
25 wasn't justified. They have to prove she wasn't

Summation - Defendant/Mr. Walensky

1 justified in acting that way.

2 So, if they haven't proved that she wasn't
3 justified in acting that way, you must acquit. And if
4 they haven't proved circumstantially their case beyond a
5 reasonable doubt, then you must acquit.

6 And as I said, we may not have answers in this
7 and when one looks at the evidence there aren't answers
8 here, we really don't know how it happened, it's not a
9 matter of finesse, it's not a matter of how much is
10 collected. The only evidence we have is this statement.
11 The only direct evidence is the statement of Atara and
12 she's interested, undoubtedly. And then you have what
13 Matthew Shepard said, that when she -- shortly after
14 this happened, I mean, it's -- yeah, it's five hours or
15 whatever, but this is a traumatic experience. Shortly
16 after this happens she outcries by saying this guy tried
17 to rape me.

18 And we can get wrapped up in poking or
19 whatever, it's semantics. The gist of it is she says he
20 tried to force himself on me.

21 And that's what the case is about.

22 So, ladies and gentlemen, I urge you to look
23 at the evidence, examine it, watch her statement again,
24 have read back what you need read back, and at the end
25 of this you must come back with a verdict of not guilty.

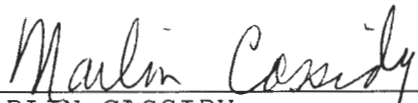
Summation - Defendant/Mr. Walensky

Thank you very much.

THE COURT: Go ahead, Ms. Chu.

(Whereupon, subsequent trial proceedings were
recorded stenographically and transcribed separately.)

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
PROCEEDING.


MARLIN CASSIDY
Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART 2

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 ATARA WISDOM,

6 Defendant.

Indictment No.:
6615/2012
(Trial)

7 Supreme Courthouse
8 320 Jay Street
9 Brooklyn, New York 11201
July 9, 2014

10 B E F O R E:

11 THE HONORABLE ALBERT TOMEI, JUSTICE
12 (And a Jury)

13 A P P E A R A N C E S:

14 HON. KENNETH P. THOMPSON, ESQ.
15 District Attorney - Kings County
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BY: DAVID WALENSKY, ESQ.
- and -
JOSHUA POVILL, ESQ.

22
23
24 MARLIN CASSIDY
25 Senior Court Reporter

Summation - People/Ms. Chu

1 (Whereupon, the following took place in open
2 court:)

3 MS. CHU: I just want to set up.

4 THE CLERK: Mr. Walensky, you took some of the
5 evidence.

6 MR. WALENSKY: Excuse me.

7 MS. CHU: Good afternoon, ladies and
8 gentlemen.

9 There are certain things in this case that are
10 undisputed, all right. First thing is that you know
11 that the defendant, Atara Wisdom, and Anthony Wilson
12 knew each other.

13 How do you know that?

14 You know that from Matthew Shepard, you know
15 that from Shakeema Fortune, and you know that from the
16 defendant's own statements right on the videotape, with
17 what she told the detectives.

18 Now, what else do you know?

19 You know they were living together.

20 How do you know they were living together?

21 Because Matthew Shepard says he knew from
22 when he first met her she was staying with Anthony
23 because she told him. You also it know from Shakeema
24 because she said she went to his house and Renee was
25 there and you also know from the defendant because in

Summation - People/Ms. Chu

1 her statement she says, I was living with him.

2 What else do you know that's undisputed?

3 You know that Anthony Wilson called 911 on
4 November 29th, 2011 at 12:37 A.M.

5 How do you know that?

6 You have his phone records that are in
7 evidence that show at 12:37 A.M. he made a phone call to
8 911.

9 You also heard from his sister who said, when
10 she listened to the tape, she said, Yes, that's my
11 brother's voice. You know that was his voice, not
12 anyone else, calling at 12:37 on 11/27/2011.

13 Now, we also know that Anthony Wilson died
14 because he was stabbed, okay.

15 Now, how do you know that?

16 You know that because you saw -- I'm sorry --
17 you heard from Police Officer Marsden who said when he
18 responded to the scene he saw what looked to be stab
19 wounds on the chest area of Mr. Wilson. You also know
20 from Dr. Scordi-Bello, who testified about the autopsy
21 that was done on Mr. Wilson, that she concurred. Dr.
22 Frederic found seven stabs wounds to his body that
23 caused his death and her expert opinion was that those
24 stab wounds made Mr. Wilson die. She talked about where
25 they were, she said there was one in the back left

Summation - People/Ms. Chu

1 shoulder here (indicating), there were five over here
2 (indicating) and then there was one more on the right
3 upper chest (indicating).

4 We also know that it was the defendant that
5 killed Anthony Wilson.

6 How do we know that?

7 We know that Matthew Shepard told you when
8 he first saw her that night at 5:15 A.M. on 11/29/2011
9 she said, I wasn't going to pay him rent and fuck him,
10 so I poked him up. That's what she said to him first,
11 okay.

12 We will talk about what he said later on in
13 the evening, about what she said to him at the house.

14 But we know that she was the one who stabbed
15 and killed him because that is what she told Matthew
16 Shepard. We also know that because she admits that she
17 stabbed Anthony Wilson on video to the detective. You
18 heard the statements. And then she also signed whatever
19 Detective Scandole wrote out for her, which was the same
20 as what she had said to him.

21 What else do we know from the evidence?

22 We also know that she intended to kill him,
23 okay, because she, according to her defense, is saying
24 that he was trying to rape her. I had to kill him
25 because he was trying to rape her.

Summation - People/Ms. Chu

1 You heard from her statements to the
2 detectives as well as to the A.D.A. --

3 MR. WALENSKY: Objection. That's not really
4 what was said.

5 THE COURT: It is this jury's recollection
6 that controls.

7 MS. CHU: How do you know she intended to kill
8 him? How do you know?

9 How many stab wounds were there?

10 Seven. Not one, not two, not three...seven
11 stab wounds. That's how you know.

12 Look at where they were located, all in this
13 area here (indicating), here (indicating), up here where
14 the heart is (indicating), right.

15 Where does she stab?

16 Most of the stab wounds are right here
17 (indicating), in the left upper chest.

18 And we know she wanted to kill him. According
19 to her defense she is saying he is trying to rape me so
20 I had to kill him, right. She wants that self-defense,
21 justification because he was trying or allegedly trying
22 to rape her.

23 So the only thing that you have to decide
24 here, ladies and gentlemen, is whether or not she was
25 acting in self-defense that day. That is all you have

Summation - People/Ms. Chu

1 to decide. Because if she wasn't acting in
2 self-defense, then she's guilty of murder.

3 So the first thing that you should be asking
4 yourselves when you are deliberating is: Was she trying
5 to prevent Anthony Wilson from raping her at the time
6 that she stabbed him, okay, and did he forcibly compel
7 her to try and have sex with him at that time when she
8 actually stabbed him.

9 And I submit to you that the evidence that's
10 before you proves beyond a reasonable doubt that he was
11 not trying to rape her at the time that she stabbed him.
12 And here's how we know it wasn't a rape.

13 First I want to talk about was it a rape at
14 all.

15 How do we know it wasn't a rape? How do we
16 know that Anthony Wilson wasn't trying to rape Atara
17 Wisdom on November 29th, 2011?

18 MR. WALENSKY: Objection. It's what's in the
19 mind of the --

20 THE COURT: Ladies and gentlemen, the
21 objection is overruled.

22 Proceed.

23 MS. CHU: We have the 911 tape, the 911 tape
24 that was authenticated by the 911 recorder who said that
25 is what we generated, a copy of a 911 call made by that

Summation - People/Ms. Chu

1 number at 12:37 on November 29th, 2011. We also have it
2 authenticated by his sister, that's actually his voice.
3 That is one of the last things that's recorded of him
4 saying before he died.

5 (Whereupon, the exhibit was played in open
6 court.)

7 MS. CHU: Those are his last words before the
8 phone cut off. I submit to you, the reason why you know
9 that it wasn't rape was because what did she tell you on
10 the video?

11 She says that it's during the rape or
12 attempted rape that she stabs him, right. She says it's
13 during when he is trying to rape her, he pulls the
14 sweater over her shoulders and she says she is bent down
15 like this (demonstrating). She says at that point she
16 stabs him. She is saying that she is stabbing him while
17 he is trying to rape her, okay.

18 If that were true, Anthony Wilson would never
19 have been able to make that phone call, he would have
20 never been able to call 911 because he would have
21 already been dead.

22 She doesn't say that they have a fight about
23 the sex, then he goes and, you know, that there's some
24 other things that goes on. We know that at the time he
25 called 911 he didn't say anything about anybody

Summation - People/Ms. Chu

1 stabbing, he just said she's acting crazy.

2 I submit to you, ladies and gentlemen, the
3 fact that he called 911 shows you that she was not being
4 raped at the time she stabbed him.

5 MR. WALENSKY: Objection, your Honor.

6 MS. CHU: How else --

7 THE COURT: That's for the jury's
8 determination.

9 MS. CHU: How else do you know?

10 I submit to you, the reason why he called 911,
11 or the fact that he called 911 on her, that was motive
12 for why she stabbed him, because whatever arrangements
13 they had, how they were living together, she's a
14 25-year-old girl living with a 50-year-old man, is it
15 okay for him to assume that if she's going to stay there
16 she might give him some sex?

17 MR. WALENSKY: Objection.

18 MS. CHU: Good, bad, indifferent.

19 MR. WALENSKY: Well beyond the evidence,
20 speculation.

21 THE COURT: Overruled.

22 MS. CHU: We don't know what their arrangement
23 was, whatever it was that made it so she would be
24 allowed to stay with him. She says on the tape she'd
25 give him some money, you wouldn't call it rent, it was

Summation - People/Ms. Chu

1 like \$20 here, \$30 here, something like that, no more
2 than \$60 bucks is what she said on the tape, and that's
3 not rent.

4 But what does she tell Matthew Shepard?

5 She says, I wasn't going to pay him rent and
6 have sex with him so I poked him.

7 Maybe the deal got renegotiated. Maybe he
8 tried to have sex with her. I am not saying he didn't
9 try to have sex with her. Just because you don't want
10 to have sex with someone doesn't mean that they are
11 trying to rape you, okay. One is totally different from
12 another.

13 I submit to you, what made her stab him and
14 proves to you that -- I'm sorry -- he wasn't trying to
15 rape her, she actually stabbed him, because you don't
16 hear him saying anything about being injured on that
17 911. He is calling because I got this girl in my house,
18 she is acting all crazy and I want her out. And that is
19 what upset her. That's the motive for why she stabbed
20 him, because from 12:37 --

21 MR. WALENSKY: Objection. There is absolutely
22 no evidence regarding that.

23 THE COURT: Overruled.

24 MS. CHU: You will look at the phone records
25 from 12:37, the 911 call, the next phone call that's

Summation - People/Ms. Chu

1 made is made to her person, that's 12:50-something. She
2 makes a phone call, I submit to you, from 12:37 that 20
3 minutes, that's when the murder happened 'cause she was
4 pissed that not only was he going to try and have sex
5 with her, but now he is going to kick her out because he
6 says I want her out.

7 No doubt he told her, look, if you are not
8 going to have sex with me, you gotta get out, and then
9 that's what put her over the edge and that is what made
10 her stab him.

11 And remember what the doctor told you, the
12 doctor tells you that these stab wounds were not
13 something that was indicative of it being a struggle
14 when he actually received them, meaning that Mr. Wilson
15 wasn't moving around a lot when he was getting those
16 stab wounds because how did he get them all in the same
17 area, the cluster, right? He had to have been still
18 enough for her to get five of those stab wounds in the
19 same area on the left upper chest.

20 What else does the 911 call prove to you, that
21 shows it wasn't rape?

22 If he was trying to rape her, why would he
23 call 911?

24 If he was trying to forcibly compel her to
25 have sex with him, why would he call 911?

Summation - People/Ms. Chu

1 Why would he call 911 to have the police
2 involved, law enforcement involved to come to his
3 house, someone who, you know he used cocaine, it was
4 in his system, there was byproduct of it in his
5 system?

6 You don't know when he used it, but why would
7 somebody like Anthony Wilson want the police to come to
8 his house unless he wanted her out, okay? Why would he
9 do that if he was wanting to rape her, that he is the
10 one that is being aggressive?

11 What the 911 actual proves is the only one
12 that was angry here was her. She is the only one
13 that's acting crazy, not Mr. Wilson. She was the one
14 that he says she is acting crazy, I want her out.
15 She is the only one that's in an arousal state like
16 that.

17 How else do you know that this wasn't a
18 rape?

19 You have Matthew Shepard. I submit to you,
20 ladies and gentlemen, you know I don't pick my
21 witnesses, they don't get picked, selected out of
22 central casting, he is who he is. He is the person that
23 she calls at five o'clock on November 29th, 2011, after,
24 I submit to you, when Anthony Wilson was killed, five
25 hours after he's killed.

Summation - People/Ms. Chu

1 And what does she say to him?

2 She doesn't say, he tried to rape me so I
3 stabbed him. She says, I wasn't going to give him sex
4 and pay him rent so I poked him. That is what she said
5 to him the first time.

6 I submit to you, the defense counsel, you
7 know, he said when she got back to the house that, oh,
8 he was trying to force himself on me, that is why I
9 stabbed him. If you think about it, ladies and
10 gentlemen, the way she was when she first spoke to him
11 versus now, a couple of hours later when she's at his
12 house, she knows that he doesn't -- he is not going to
13 let her stay, she needs him, okay. He is the only one
14 that met her that morning or was willing to meet her at
15 five o'clock in the morning to come get her, right, and
16 now she's at the point where she needs something from
17 him.

18 MR. WALENSKY: Objection. There is absolutely
19 no evidence regarding any of this. It's speculation.

20 MS. CHU: She --

21 THE COURT: Overruled.

22 MS. CHU: He testified that she wanted to stay
23 with him. You heard Mr. Shepard, he said she wanted to
24 stay with me, I was like umm, umm. So if you think
25 about it, ladies and gentlemen, umm, umm, if you just

Summation - People/Ms. Chu

1 told somebody you just stabbed somebody, if you told
2 Matthew Shepard you stabbed this guy, you want him to
3 allow you to stay in his house, why would anybody want
4 to let you stay in the house if she just said I stabbed
5 somebody because she didn't want to have sex with
6 them?

7 Now, I submit to you, the motives are
8 different for why she is telling him, oh, well, I was
9 afraid, he tried to force himself on me, now I had to
10 stab him, because everybody knew why Mr. Shepard wanted
11 her to come to his house. He said he wanted to have
12 sex. If you are calling me at 5:00 in the morning, that
13 is a booty call, okay, so I'm thinking she is a young
14 girl, I'm whatever, I'm single, hey, he wants to have
15 sex with her. And when she tells him that she did that
16 to Anthony Wilson, I'm not trying to have that, I submit
17 to you, the reason why she said that is because she was
18 trying to make excuses for why she did it.

19 She is also trying to send a message to Mr.
20 Shepard, don't you try that either, don't you try and
21 have sex with me because I'm telling you what happened
22 to Anthony Wilson, I'll do the same thing.

23 The next thing or the next piece of evidence
24 that you have that proves that she was not being raped
25 at the time that she stabbed Anthony Wilson is, what

Summation - People/Ms. Chu

1 does she do after, according to the videotape?

2 She says, I take his keys, I take his wallet,
3 I take his phone.

4 And you know she used the phone because you
5 have the phone records. You have the phone records from
6 her phone, her cellphone, and you also have the phone
7 records from Anthony Wilson's phone, and you'll see on
8 there that the phone numbers that are called by Anthony
9 Wilson's phone are the patterns that she has on her own
10 phone. And, in fact, on her own she never uses it from
11 12:03 A.M. on November 29th, 2011 all the way until
12 three o'clock that afternoon. She doesn't use the phone
13 at all. And the only reason why she gets something at
14 three-something is because somebody texted her
15 something.

16 For the entire period of time of 12:03 or --
17 I'm saying after the entire time from 12:03 up till
18 three-something in the afternoon on November 29th, whose
19 phone is being used?

20 Anthony Wilson's phone is being used, okay,
21 it's being used to call people --

22 MR. WALENSKY: Objection.

23 MS. CHU: -- on her list.

24 MR. WALENSKY: This is not about the phone,
25 it's about what happened in that apartment.

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1 THE COURT: Objection is overruled.

2 MS. CHU: We also know that --

3 What did she do with the keys?

4 She took the keys, she took the phone, she
5 took the wallet. She locked the door. She locked the
6 door to that apartment.

7 Now, you know it was locked because Donet
8 Robinson told you he had to use the key to get in five
9 weeks later.

10 What did she do by locking Mr. Wilson in?

11 Remember what Donet Robinson said, you have
12 the ability in the apartment to turn the heat off.

13 It was cold, January 2011. You heard from
14 the Crime Scene detective, he said it was cold that
15 night, it was like 28 degrees out and that heat was
16 off.

17 Why do you think that happened?

18 That shows you that it wasn't a rape, that she
19 wasn't trying to defend herself from a rape that night.
20 It was murder. She was trying to cover up what she did.
21 She tries to cover it up, the heat's off, she locks the
22 door so no one can find him.

23 MR. WALENSKY: Objection. There is no
24 testimony the heat was on at any time.

25 THE COURT: Objection is overruled. It's the

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1 jury's recollection that controls.

2 MS. CHU: She has the wherewithal to lock
3 the door so that no one goes in. She doesn't leave it
4 wide open so somebody can, oh, my gosh, look at him, let
5 me go in there and find him. No, for five weeks they
6 don't find Anthony Wilson, his body is just there
7 presumably sort of kept because of the fact that the
8 room is so cold, but he is just there because nobody did
9 discover him. Shakeema, she tried. She goes to the
10 house, there was no answer. The siblings, his sister,
11 Anthony Wilson's sister, he didn't show up for Christmas
12 so she knocked on the door, went by the house, no
13 answer.

14 So no one could discover him, these are the
15 actions of someone who has everything to hide, someone
16 who did something wrong and is trying to hide the
17 evidence so that they can't find out.

18 MR. WALENSKY: Objection. This was a tale of
19 speculation without --

20 THE COURT: Objection's overruled.

21 MS. CHU: Now, what about that Welfare
22 card?

23 We heard from a representative from the HRA,
24 they told you that his card was used at certain places
25 before November 29th, 2011 and then his card is used at

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1 other places after November 29th, 2011, okay. And she
2 says in her statement to the police officer, she says
3 about that Welfare card, I took it but I never used it.
4 I am not suggesting to you that it was used by her, but
5 I am suggesting to you that it was used by someone that
6 wasn't Anthony Wilson because it's going to all
7 different places now, all right.

8 And she says in her statement, she goes, not
9 only does she flee from the house, I lock the door, make
10 sure no one can discover what happened --

11 MR. WALENSKY: That is not the testimony.
12 Objection.

13 THE COURT: Whatever the testimony is, it's
14 the jury's recollection of the testimony that controls.
15 Proceed.

16 MS. CHU: She flees, okay. She flees from the
17 scene and she is not apprehended until July, the end of
18 July 2012, that's eight months later, okay. We know
19 from her benefit card that her card was being used in
20 Pennsylvania, in New Jersey, back to Brooklyn, back to
21 New Jersey, to Pennsylvania, and she says, she admits on
22 her statement that she went to different places because
23 she is not trying to get caught up in what happened
24 there.

25 MR. WALENSKY: Objection. That's not the

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1 testimony.

2 THE COURT: Again, it's the jury's
3 recollection that controls.

4 MS. CHU: How else do you know it wasn't rape
5 and that there was some sort of arrangement between her
6 and Anthony Wilson with regard to how and why he was
7 allowing her to stay at his house?

8 She says that he's, you know -- in the video
9 statement you hear her tell you, he tried to get fresh
10 with me, I got mad, I went to Ebony's house, then went
11 to her sister's house, then went to a friend's house.
12 You hear about different people, like her sister, like
13 Tiffany, Ebony, all these people that she goes to when
14 she is supposedly angry at Anthony Wilson for trying to
15 have sex with her.

16 Now, if you think about it, you know the
17 scenario, it's a little -- you know, you might not
18 approve. I am not saying you should or shouldn't, I am
19 just saying that's the deal they had. She is a
20 25-year-old girl staying with a 50-year-old man, okay,
21 in a small room, 19 by 15. If you look at the crime
22 scene diagram, you will see he measured the room, 19 by
23 15. That is a small room with just a bed, a
24 kitchenette, not even a sofa.

25 She said she is sitting on a couch, right.

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1 It's a lounge chair, a single lounge chair. There is
2 only one bed in that room and that's Anthony Wilson's
3 bed. And whether he assumed she was going to give him
4 sex because he let her stay there or he made an
5 arrangement with her, you can stay at my apartment if
6 you have sex with me, I mean, we don't know what the
7 arrangement was.

8 I am not asking you to speculate as to what it
9 was, but the fact of the matter is that she had other
10 places to go when she was supposedly mad at Mr. Wilson
11 for trying to have his way with her. She had Ebony's
12 house, she had her sister's house, she had Tiffany's
13 house, but no, she chose to continue going back there.
14 She chose --

15 MR. WALENSKY: Objection. There is no
16 testimony as to where she could have stayed for the long
17 term, your Honor.

18 THE COURT: Objection's overruled.

19 MS. CHU: I'll move on.

20 How else do we know that it wasn't a rape
21 that was occurring when she actually stabbed Anthony
22 Wilson?

23 The only phone that called 911 is Mr. Wilson's
24 phone. We know it was Mr. Wilson who called 911 because
25 we heard his voice. There is no 911 call made by any of

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1 those numbers, not Atara Wisdom's number, not Matthew
2 Shepard's number, no phone call to 911.

3 There wasn't a 911 call after Anthony Wilson
4 called 911. She never tried to call the police to let
5 them know that this guy just tried to rape me and I
6 stabbed him. She never tried to get any medical
7 attention.

8 She said she had some bruises on her but she
9 never went to the police, she never went to a doctor or
10 a hospital or anything like that to get checked out,
11 make sure she is okay, never did any of that. That is
12 not behavior of someone who's saying that she was about
13 to be violently raped by Anthony Wilson.

14 I submit to you, her failure to call the
15 police proves that she was trying to hide something
16 about what happened in that apartment at 832 --

17 MR. WALENSKY: Objection. There is no
18 evidence.

19 THE COURT: Objection is sustained.

20 The defendant had no burden to call the police
21 and you are not to speculate as to why she didn't call
22 the police. Sustained.

23 MS. CHU: Let's talk about how many times she
24 stabbed Anthony Wilson.

25 And she says she is doing this because she is

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1 trying to prevent a rape, right, and Anthony Wilson,
2 there's -- well, she labels it number one (indicating),
3 the first one is labeled here (indicating). These are
4 randomly labeled (indicating). That means that the
5 doctor has no way of knowing which one of them occurred
6 first, she just chooses -- she chooses the one up here
7 (indicating) as the first one.

8 So, we have five wounds to the left chest, we
9 have one wound to the right chest, we have one wound to
10 the back of the left shoulder, okay, right there
11 (indicating).

12 How do you know from these wounds that she
13 wasn't trying to be raped at the time she stabbed him?
14 What does she say on the video?

15 She says, I am bent over, right. She says, he
16 punches me in the face and then he pulls my sweater over
17 my head. She said now she is bent forward like this
18 (demonstrating). She says, I am bent forward like this
19 (demonstrating), he is on top of me. So, he's facing
20 her and on top. She says he is pounding or he is
21 beating on my shoulders, right, he has the hood over the
22 thing, so she says, I take out the knife, which she put
23 in her pocket, right. She has that knife that was in
24 her bag, she took it out. When he took the sweater, she
25 takes out the knife, I start stabbing him, okay. I

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1 start stabbing him, and she says, I got him probably on
2 the legs, because according to the way she's standing
3 she had to have got him on the legs. Bent over, the
4 part of his body she reached would be down here
5 (indicating), right.

6 But what do we know about the evidence,
7 because science doesn't lie?

8 His wounds, not one of them was a slash wound.
9 Not one of them was what the doctor called a laceration,
10 meaning that it's more long than it is deep. She said
11 all of these stab wounds that he got, all seven of them,
12 were more deep than they were wide, meaning they were
13 actually puncture wounds, that the knife goes in. No
14 slash wounds, nothing on his legs, not on his hands, not
15 on his wrists, not on his arms. None of them were what
16 might be considered defensive wounds, okay. He had no
17 defensive wounds on his body whatsoever, okay.

18 So, if she's saying that he supposedly is on
19 top of her, punching her and everything, first of all,
20 it's not supported by the medical evidence because he
21 has no injury whatsoever to his legs. If he was allowed
22 to come up a little bit -- you think about it, he is 155
23 pounds, he is a little taller than her, she was 115
24 pounds, five foot six, right, she said she is trying to
25 get up.

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1 What did the doctor tell you about the wounds?

2 He tells you -- I'm sorry -- she told you that
3 the wounds, with the exception of wound number six, they
4 were all what are front to back, left to right, and
5 downward. If you're having a knife in your right hand
6 and you are stabbing somebody like this (demonstrating),
7 someone's facing you, the left side of your body would
8 be where the person's right hand was, exactly how the
9 knife went in, it went from left to right, back to
10 front -- I'm sorry -- front to back, meaning going
11 towards the back of him and downward.

12 There's no way she could have had leverage to
13 get the knife in at that angle, at that direction and
14 that deep if she was merely trying to hit at him like
15 this (demonstrating), which is what she testified to,
16 which is what she said to the police and to the District
17 Attorney on the video. There's no way that those wounds
18 support what she said.

19 MR. WALENSKY: Objection. It's not what she
20 said on the video, your Honor.

21 THE COURT: The jury will look at the video
22 and make a determination, or has looked at the video,
23 they will make a determination.

24 MS. CHU: What else did the doctor tell you?
25 She told you three of the wounds were six --

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1 sorry -- five to six inches deep, okay. That's not
2 someone who's slashing around, that's someone who's got
3 anger plunging that knife right into his chest five to
4 six inches deep, with enough force for that knife to cut
5 through a bone, okay. We are not talking about soft
6 tissue here, we are talking about that went through his
7 chest, it punctured his lung and went right through the
8 fourth rib of Anthony Wilson.

9 MR. WALENSKY: Objection. There was
10 significant testimony that cut the bone, not it cut
11 through.

12 THE COURT: Objection is overruled.

13 MS. CHU: Whether it cut the bone or cut
14 through the bone, the fact of the matter is the knife
15 cut the bone, okay, it went through something hard like
16 a bone. That's how much force she was using when she
17 stabbed him.

18 And I submit to you that the injuries also,
19 the doctor told you, they are not consistent with him
20 moving around. At the time he is getting stabbed he is
21 stationary because otherwise how would she be able to
22 get it all in the same area at that time?

23 And remember, if supposedly he was being
24 killed at the time he's trying to rape her, the 911 call
25 would never have been made. Remember? Forget about

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1 that 911 call?

2 We know that at the time she stabbed him she
3 was not being raped. Forgot about that.

4 So if you are not preventing a rape, then that
5 means the only other thing it could be is you
6 intentionally murdered him.

7 She intentionally plunged that knife seven
8 times into Anthony Wilson's body because she wanted him
9 dead. She wanted him dead because he had the nerve to
10 not only try and maybe change the arrangements that she
11 had for her living there, or maybe he was trying to have
12 sex with her, she just didn't feel like it, whatever it
13 was, she was mad because he had the nerve to call the
14 cops, that when he calls the cops he says I want her
15 out, he was kicking her out. And you knew she was
16 having trouble finding a place to stay. She told that
17 to Matthew when she first met him, I am staying with
18 Tony because I don't have a place to stay.

19 He was terminating her ability to stay where
20 she was and give \$20 whenever she could to pay for
21 food. He was going to stop that free trade that she
22 had.

23 So the only person that you can conclude from
24 all the evidence that was acting irrationally or angry
25 was the defendant, it wasn't Mr. Wilson, because you

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1 heard his call, he was just upset because she was acting
2 that way. She is the only one that was angry that
3 night, on November 29th, 2011.

4 And the same evidence that proves that she
5 was not acting in self-defense when she stabbed him is
6 the same evidence that proves she was intentionally
7 causing his death, okay. I say that to you only because
8 the Judge is going to inform you we have the burden of
9 proving she was not acting in self-defense. That
10 doesn't mean I have to offer extra evidence, offer
11 other evidence. The same evidence that proves she was
12 intentionally causing the death of Anthony Wilson is
13 the same evidence that proves that she wasn't trying
14 to prevent him from raping her at the time she stabbed
15 him.

16 MR. WALENSKY: Objection.

17 THE COURT: Overruled.

18 MS. CHU: And we know it's intentional
19 murder because, again, I go back to the 911 call. If
20 he is trying to rape her, why would he be calling 911?

21 We know that she, according to her statement,
22 she says, I stabbed him when he was trying to rape me,
23 not after, not anything like that. At the time he is
24 trying to rape her, that is when she stabs him, okay.

25 She tells Mr. Shepard, he wants to have sex

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1 and have me pay rent too so I poked him, right.

2 We know that the cluster of the wounds was all
3 in this area (indicating) where it's very vulnerable.
4 That is why you have ribs, to protect the major organs.
5 What knife wounds do, the three that were the most fatal
6 went right through his heart and two times through his
7 left lung.

8 What did Dr. Scordi-Bello tell you?

9 Dr. Scordi-Bello told you that would have
10 affected his ability to breathe, not instantly drop but
11 he would have had difficulty breathing, difficulty
12 moving, at some point he would have lost consciousness,
13 couldn't give you an exact time. But that proves to you
14 that at the time he made -- at the time Anthony Wilson
15 made that phone call he didn't have any of those
16 injuries yet, he was perfectly fine when he called 911,
17 it wasn't until after that 20-minute period between
18 12:37 and 12:57, when she starts making phone calls on
19 his phone that she committed this murder, it's because
20 he was trying to kick her out of that house. The free
21 ride that she was getting all of November was going to
22 end and she killed him.

23 What else do you know that shows it was
24 murder?

25 Now, I'm not saying that she planned this

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1 ahead of time. She could have made up her mind to kill
2 him the very moment she did the first plunge into his
3 body.

4 The Judge is going to give an instruction on
5 intent. Intent doesn't have to be premeditated, that
6 you don't have to lay in wait and plan things out for
7 weeks and weeks.

8 MR. WALENSKY: Objection.

9 THE COURT: Overruled.

10 MS. CHU: You can have that intent up to and
11 including the very moment that you're actually engaging
12 in the conduct, meaning first knife in. She could be
13 formulating that intent in her mind right then and
14 there, and that's what the law says.

15 Now, what else do we know about intent?

16 I told you about the whole key thing. She
17 locks the house up to prevent discovery of Mr. Anthony
18 Wilson.

19 What else is there?

20 You saw, from the exhibits, the floor.

21 This is People's Number 6 in evidence
22 (indicating) and you see all the blood on the floor. It
23 looks like someone was trying to wipe it up. The same
24 thing with the feces, looks as though someone was trying
25 to wipe it up, okay.

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1 So, we know Anthony Wilson wasn't trying to
2 clean his house after he got stabbed. She was the only
3 one in there.

4 This is yours.

5 She was the only one in there. And why is she
6 trying to clean up?

7 Maybe because she's trying to cover up that
8 she intentionally stabbed Anthony Wilson seven times
9 causing his death.

10 Another thing that's very interesting is that
11 now we talked about we don't know what type of
12 relationship the defendant had with Mr. Wilson as far as
13 what their arrangement was for her being able to live
14 there, but we do know from Shakeema Fortune, when she
15 did go there she says Anthony Wilson introduces Shakeema
16 to Renee as his girlfriend. He says, this is my
17 girlfriend Renee, right.

18 Then what does Renee say or what does the
19 defendant say when Shakeema Fortune goes are you going
20 to come out with us to play pool?

21 She says, He's not going anywhere.

22 Is that the words of someone who's just a
23 roommate of yours or is that the words of a woman who's
24 your girlfriend, and a possessive one at that, that he's
25 not going anywhere, right?

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1 I submit to you, that's how you know that
2 there was some other arrangement or that they may have
3 been even boyfriend and girlfriend, that she was
4 consensually having sex with him and maybe on November
5 29th he wanted to have sex, she didn't. That doesn't
6 mean it's rape, that just means I didn't want to have
7 sex with him, okay.

8 How else do you know that this is Murder in
9 the Second Degree, intentional murder?

10 How we find Mr. Wilson's body.

11 When you hear her on video she says --
12 remember, Mr. Purce asked her, what was he wearing? She
13 said jeans and T-shirt, right. She says on the video at
14 the time he is trying to rape her he's wearing jeans and
15 a T-shirt.

16 This is how he ends up (indicating), he's on
17 the bed and there's blood on the floor near the kitchen
18 but there's also blood on the mattress and under the
19 mattress.

20 I submit to you, ladies and gentlemen, him
21 being naked, she says when she leaves he is on the bed
22 already, she leaves the apartment after she goes and
23 grabs the keys, the wallet and the cellphone. She says
24 he is on the bed by now. She says, I just go out. We
25 know that's not true, because how did he get naked?

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1 Remember all those questions I asked the
2 Medical Examiner about the pants?

3 I said, these pants, can you take a look at
4 them and tell me what it looks like, there's some stains
5 on them?

6 Those look like diluted feces or urine, not
7 blood, because blood would be darker. That is what she
8 said.

9 If you look at these pants -- now, the defense
10 has this theory that, you know, he drops his pants after
11 he defecates then he plops himself on the bed. I submit
12 to you --

13 MR. WALENSKY: Not after he defecates. It's
14 not what was said.

15 THE COURT: Do you have an objection?

16 MR. WALENSKY: Objection.

17 THE COURT: Just object.

18 MR. WALENSKY: Objection. It's not what was
19 said.

20 THE COURT: Ladies and gentlemen, it's your
21 recollection that controls.

22 Overruled.

23 MS. CHU: I submit to you, ladies and
24 gentlemen, that because of what Dr. Scordi-Bello told
25 you, you know that he was wearing his pants at the

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1 time he defecated because we have evidence of poop
2 being in there and, you know, some urine in there,
3 right. And if he's wearing the pants at the time he
4 commits -- I'm sorry -- at the time he's murdered, Dr.
5 Scordi-Bello tells you, in fact, when Mr. Walensky
6 questioned her, he had asked her, is it common for
7 people to release their bowels and their urine when
8 they die and she says yes, that is possible, that is
9 common, in fact.

10 So if his pants were on when he died and the
11 poop -- I'm sorry -- the feces ended up in his pants,
12 look at how the pants end --

13 MR. WALENSKY: Your Honor.

14 MS. CHU: What is the most important --

15 MR. WALENSKY: Objection. There is no
16 evidence regarding feces in the pants. There was no
17 testimony, there was nothing. That's not -- that wasn't
18 the argument made.

19 THE COURT: Objection is overruled.

20 It's the jury's recollection that controls.
21 Proceed.

22 MS. CHU: Dr. Scordi-Bello told you that
23 those stains look like diluted feces and urine, not
24 blood.

25 You can ask to have her testimony read back to

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1 you.

2 I submit to you, that the state of these pants
3 is very important here because how do pants get inside
4 out?

5 You heard from the Crime Scene detective,
6 these were regular blue jeans, these weren't skinny
7 jeans, they weren't leggings or nothing that would stick
8 to your body so that when you took them off they might
9 end up being inside out. Just regular old jeans.
10 And -- I'm sorry.

11 I submit to you, the way they got inside out
12 was because after Anthony Wilson was stabbed to death by
13 Atara Wisdom, she took his pants off because that is the
14 only way you can get them inside out, like if someone
15 else takes off your pants, they grab you from there,
16 they just pull them off like that (indicating). That is
17 exactly how they were. That is exactly how the feces
18 would have ended up on the floor, because when she took
19 them off and threw them on the floor, then the poop or
20 the feces comes out, ends up on floor.

21 You know there was an attempt to try and clean
22 it up because there were smears, there were smears of
23 blood, smears of feces.

24 MR. WALENSKY: Objection to what the jury
25 knows.

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1 THE COURT: Overruled.

2 MS. CHU: Now, remember, Atara Wisdom didn't
3 see Matthew Shepard until five hours later, okay. If
4 the 911 call's at 12:37 A.M., she doesn't reach out to
5 Matthew Shepard until 5:00 A.M., that's over four hours
6 in that apartment where she could have done a lot of
7 things. You know she cleaned up because Mr. Shepard
8 told you when he saw her she didn't have any blood on
9 her, she didn't have any indication that she had been in
10 some sort of altercation or -- he thought maybe her face
11 was swollen. And if you're trying to kill somebody, you
12 would imagine they are trying to hit at you, she
13 probably did get hit in the face while she's trying to
14 stab Anthony Wilson to death.

15 And I submit to you, ask yourselves, why was
16 he naked? Why was it necessary for him to be naked on
17 the bed like that?

18 And I submit to you, it's because the
19 defendant had already started thinking how she is going
20 to answer for this. And I submit to you, she wanted to
21 make it look exactly how she wanted to say it, right,
22 that he was trying to rape her. So she takes off his
23 clothes and she leaves him in the bed like that because
24 that is -- because that supports her story that, look,
25 he's naked, he was trying to rape me.

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1 Now, remember, when she is talking to the
2 District Attorney and when she's talking to the
3 detectives, we are talking about eight months after
4 she's already committed this crime, right. She says
5 after, she says five weeks, they don't even find Anthony
6 Wilson till January 3rd, okay. January 3rd is when they
7 find the body and then they are looking for her. When
8 they start looking for her in March and April because
9 there's a DNA hit, right, from the blood in the
10 bathroom, they find her DNA there.

11 And if you recall what the DNA person said,
12 now the defense counsel argued that it's not menstrual
13 blood, in fact she says we don't have a test that can
14 determine or distinguish between regular blood that
15 comes out of your veins and menstrual blood. She says,
16 we don't know that. We don't separate. There is no way
17 for us to distinguish between the two types of blood.
18 We don't know how long that blood in the bathroom had
19 been there. We don't know whether she might have cut
20 herself stabbing Anthony Wilson that very night. We
21 don't know.

22 And I submit to you, ladies and gentlemen,
23 that eight months later when she is talking to the
24 police, she's already been churning this story in her
25 mind because she already created it. From the moment

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1 she left that apartment on November 29th, 2011, she
2 already had it in her mind, he tried to rape me so I
3 killed him. He tried to rape me, I killed him.

4 When she gets to see Matthew Shepard five
5 hours later she doesn't say that, she says, he is trying
6 to have sex with me and make me pay rent so I poked him.
7 It wasn't until after she realizes he's not going to let
8 her stay at his house either that she tried to mitigate
9 what she was doing, makes an excuse why she had to kill
10 Anthony Wilson. She tries to make excuses why she had
11 to kill Anthony Wilson.

12 How do we know that she is lying about how all
13 this occurred?

14 Because from what I told you earlier having to
15 do with the Medical Examiner, that the Medical
16 Examiner said the injuries on Anthony Wilson's body
17 talked from the dead because his wounds don't
18 corroborate how she says she had to kill him during a
19 rape. His wounds are more consistent with an
20 intentional, quick, fast (demonstrating). She is right
21 in front of him stabbing him with all her might to get
22 that blade right through that bone.

23 In a little while the Judge is going to give
24 you instructions regarding circumstantial evidence and
25 justification. I know everybody -- you know you have

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1 what you see on TV, what you might know yourselves,
2 you all have different ideas about what justification
3 might be or self-defense or even circumstantial
4 evidence. And I ask you to set aside what you think and
5 only listen to what the Judge tells you because he is
6 the one that is going to give you the law. Even if you
7 don't believe or think that, oh, my gosh, that is not
8 what I thought it was, you still have to follow what he
9 says.

10 You all promised as jurors that you would
11 follow the law as given to you by the Judge and I ask
12 you to please listen carefully to what he says because
13 he will give you justification, that if the defendant
14 thought that she was being -- going to be raped or that
15 she was being raped, that she has a right to self --
16 to use deadly physical force, she has to reasonably
17 believe. There are a couple of tests that have to
18 go --

19 MR. WALENSKY: Objection, your Honor. The
20 Court will give the instruction.

21 THE COURT: Overruled.

22 MS. CHU: She has to reasonably believe that
23 he was trying to rape her at the time that she actually
24 stabbed him. But we know from all the evidence that he
25 wasn't trying to rape her at the time she stabbed him.

Summation - People/Ms. Chu

1 We have the 911 call, what she said to Matthew Shepard.
2 So if it's not self-defense, meaning that she was not
3 being or he wasn't trying to rape her at the time she
4 actually stabbed him, then it's -- the only thing it
5 could be is murder, intentional murder, that she stabbed
6 him because he wanted her out of the apartment, that's
7 the reason why that flipped her head like, oh, you
8 trying to renegotiate our deal and you want to kick me
9 out now because I won't give you sex, I'm going to kill
10 you now, okay. She knows he --

11 MR. WALENSKY: Objection. There is no
12 evidence, it's sheer speculation.

13 THE COURT: Overruled.

14 MS. CHU: He calls the police. He calls the
15 police while she's there and says she's acting crazy,
16 she's in my house and I want her out.

17 MR. WALENSKY: Objection. We don't know
18 whether she is there at the time.

19 THE COURT: Objection is overruled.

20 MS. CHU: He says the girl is in my house and
21 I want her out. He doesn't say there was a girl in my
22 house, he says there is a girl in my house. He doesn't
23 say anything about being injured, not I'm being stabbed,
24 not even she has a knife and I want her out. He doesn't
25 mention anything of that because, I submit to you, that

Summation - People/Ms. Chu

1 knife wasn't taken out until after she got proof from
2 Anthony Wilson that he was going to try and get her out
3 because he calls 911 and that is what set her off, that
4 is what made her go take that knife out of her pocket
5 that was in her sweater, conveniently, and then stab
6 him.

7 And I submit to you, if you are standing
8 right in front of somebody and you're stabbing them
9 repeatedly in the chest like they got one here
10 (indicating), she's got five here (indicating), it's
11 easy to go right here (indicating). This one wasn't
12 very deep (indicating), was only a half inch deep,
13 right. But all these are the ones (indicating), two
14 inches, five to six inches, these are the ones that
15 were the ones that killed him, the ones that went
16 through his heart, the ones that went through his
17 lungs.

18 I submit to you, ladies and gentlemen, the
19 defendant's statements to the police and to the
20 District Attorney's Office don't make sense in light
21 of all the other evidence that you have in this case,
22 the forensic evidence from the ME's office, you have
23 the evidence from the scene, pictures and other stuff.

24 I submit she staged that scene. She wanted it
25 to look like there was some sort of melee. And you

Summation - People/Ms. Chu

1 heard from his sister from his friend Keema, from his
2 landlord, he was neat, he never kept his apartment like
3 that. She is the one who made it like that.

4 Self-defense, the Judge is going to tell you,
5 is available in very limited circumstances and the
6 self-defense that he is going to give you, the
7 instructions he is going to give you, says that she has
8 to believe that she was about to be raped or was being
9 raped at the time she stabbed him. We know from the
10 evidence that couldn't possibly be true. It couldn't
11 possibly be true.

12 And if it doesn't fit according to how the
13 test asks you to do, then you're simply not entitled to
14 that defense as a defendant. If you meet the criteria,
15 it's a very specific definition of what fits -- I'm
16 sorry -- what meets the criteria --

17 MR. WALENSKY: Objection, your Honor,
18 instructing the jury.

19 THE COURT: Overruled.

20 MS. CHU: If it doesn't meet that criteria,
21 she's not entitled to that defense.

22 I submit to you, the evidence in this case
23 proves Atara Wisdom intentionally stabbed Anthony
24 Wilson one, two, three, four, five, six, seven times,
25 until he died from his wounds and she just left him

Proceeding

1 there, and I ask you to return a verdict of guilty of
2 Murder in the Second Degree because that is what she
3 did.

4 THE COURT: All right, ladies and gentlemen,
5 we will take a ten-minute break. At 4:10 I will charge
6 you on the law, all right.

7 Just leave your books there and do not discuss
8 the case amongst yourselves.

9 (Whereupon, the Jury exited the courtroom.)

10 THE COURT: All right, ten minutes.

11 (Whereupon, a brief recess was held.)

12 (Whereupon, subsequent trial proceedings were
13 stenographically recorded and transcribed separately.)

14 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
15 THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
16 PROCEEDING.

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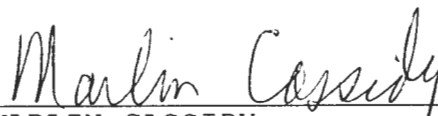
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MARLIN CASSIDY
Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART 2

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Indictment No.:
6615/2012
(Trial)

6 ATARA WISDOM,

7 Defendant.

8 -----X

9 Supreme Courthouse
320 Jay Street
Brooklyn, New York 11201
July 9, 2014

10 B E F O R E:

11 THE HONORABLE ALBERT TOMEI, JUSTICE
12 (And a Jury)

13 A P P E A R A N C E S:

14 HON. KENNETH P. THOMPSON, ESQ.
District Attorney - Kings County
15 350 Jay Street
Brooklyn, New York 11201
16 BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

17
18 DAVID WALENSKY, ESQ.
Attorney for Defendant
19 910 Stuart Avenue
Mamaroneck, New York
20 BY: DAVID WALENSKY, ESQ.
- and -
21 JOSHUA POVILL, ESQ.

22
23
24 MARLIN CASSIDY
25 Senior Court Reporter

Charge

1 (Whereupon, the following took place in open
2 court:)

3 THE CLERK: Case back on trial continues. All
4 parties present, defendant with attorney.

5 THE COURT: Get the jury.

6 COURT OFFICER: Jury entering.

7 (Whereupon, the Jury entered the courtroom.)

8 THE COURT: All jurors are present and seated.
9 Do both sides waive the roll call?

10 MR. WALENSKY: Yes.

11 MS. CHU: So waived.

12 THE CLERK: Thank you.

13 THE COURT: Madam forelady, ladies and
14 gentlemen of the jury, I will now state to you some of
15 the general principles of law applicable to this and all
16 criminal cases.

17 I charge you that you must accept the
18 principles of law as stated by the Court, whether you
19 agree with them or not. You have no discretion
20 whatsoever to depart from the principles of law which I
21 shall now state.

22 You and I are sitting here together as judges,
23 you as the judges of the facts and I as the judge of the
24 law.

25 The first and most important principle for you

Charge

1 jurors to remember is that you are the sole and
2 exclusive judges of the facts in this case. In that
3 capacity you will decide the facts coolly, calmly and
4 deliberately, and without fear or favor or prejudice or
5 passion or empathy.

6 You must not, under any circumstances, indulge
7 in speculation or guesswork, nor are you to consider
8 anything outside of the evidence. In other words, don't
9 try to be detectives, don't try to conjecture what you
10 would do, or what should have been done, or what might
11 have been done or could have been done.

12 Your own recollection, understanding and
13 evaluation of the facts presented by evidence at this
14 trial is what controls, regardless of what counsel for
15 either side of the case may say about the facts, and
16 even regardless of what the Court may say about the
17 facts. I wish to advise you, also, at this time, that
18 you are not to consider anything I said during the trial
19 or any questions I've asked, nor anything that I may say
20 to you during the course of this charge, as indicative
21 that I have any opinion on this case one way or another.
22 I have no opinion whatever.

23 I have no power to tell you what the facts are
24 or to tell you that one fact is more important than
25 another fact, or what witness is truthful or what

Charge

1 witness is untruthful. These are all matters within
2 your own exclusive power as judges of the facts.

3 You are not bound to accept the arguments of
4 respective counsel. If you find that any argument urged
5 by either of them is reasonable and logical and based
6 upon the evidence as you recall it and is consistent
7 with that evidence, you are free to accept that argument
8 as your own and give it as such weight as you deem
9 advisable. On the other hand, if you find that any
10 argument or conclusion is not based upon the evidence,
11 or it's unreasonable, illogical or inconsistent with
12 the evidence, you may disregard it entirely.

13 As to the law of the case, however, you, as
14 jurors, must not set up your own conceptions or
15 preconceived notions of what the law should be. You
16 must accept the law as given to you for your guidance in
17 the determination of issues of fact.

18 We now turn to the fundamental principles of
19 our law that apply in all criminal trials, the
20 presumption of innocence, the burden of proof, and the
21 requirement of proof beyond a reasonable doubt.

22 Throughout these proceedings the defendant is
23 presumed to be innocent. As a result, you must find the
24 defendant not guilty, unless on the evidence presented
25 at this trial, you conclude that the People have proven

Charge

1 the defendant guilty beyond a reasonable doubt.

2 Defendant is not required to prove that he is
3 not guilty. In fact, the defendant is not required to
4 prove or disprove anything. To the contrary, the People
5 have the burden of proving the defendant guilty beyond a
6 reasonable doubt. That means, before you could find the
7 defendant guilty of a crime, the People must prove,
8 beyond a reasonable doubt, every element of a crime,
9 including that the defendant is the person who committed
10 that crime. The burden never shifts from the People to
11 the defendant. If the People fail to satisfy their
12 burden of proof, you must find the defendant not guilty.
13 If the People satisfied their burden of proof, you must
14 find defendant guilty.

15 What does our law mean when it requires proof
16 of guilt "beyond a reasonable doubt?"

17 The law uses the term, quote, proof beyond a
18 reasonable doubt, close quote, to tell you how
19 convincing the evidence of guilt must be to merit a
20 verdict of guilty. The law recognizes that, in dealing
21 with human affairs, there are very few things in the
22 world that we know with absolute certainty. Therefore,
23 the law does not require the People to prove the
24 defendant guilty beyond all possible doubt. On the
25 other hand, it's not sufficient to prove that defendant

Charge

1 is probably guilty. In a criminal case, the proof of
2 guilt must be stronger than that, it must be beyond a
3 reasonable doubt.

4 A reasonable doubt is an honest doubt of the
5 defendant's guilt for which a reason exists based upon
6 the nature and quality of the evidence. It is an actual
7 doubt, not an imaginary doubt. It is a doubt that a
8 reasonable person, acting in a matter of this
9 importance, would be likely to entertain because of the
10 evidence that was presented or because of the lack of
11 convincing evidence.

12 Proof of guilt beyond a reasonable doubt is
13 proof that leaves you so firmly convinced of the
14 defendant's guilt that you have no reasonable doubt of
15 the existence of any element of the crime or of the
16 defendant's identity as the person who committed the
17 crime.

18 In determining whether or not the People have
19 proven the defendant's guilt beyond a reasonable doubt,
20 you should be guided solely by a full and fair
21 evaluation of the evidence. After carefully evaluating
22 the evidence, each of you must be convinced beyond a
23 reasonable doubt of the defendant's guilt.

24 Whatever your verdict may be, it must not rest
25 upon baseless speculations, nor may it be influenced in

Charge

1 any way by bias, prejudice, sympathy, or by a desire to
2 bring an end to your deliberations or to avoid an
3 unpleasant duty.

4 If you are not convinced beyond a reasonable
5 doubt that the defendant's guilty of a charged crime,
6 you must find the defendant not guilty of that crime.
7 If you are convinced beyond a reasonable doubt that the
8 defendant is guilty of a charged crime, you must find
9 the defendant guilty of that crime.

10 Now, defendant did not testify in this matter,
11 and the fact that he did not testify is not a factor
12 from which any inference unfavorable is to be drawn as
13 against the defendant by you, the jury.

14 Are you getting water?

15 THE CLERK: Yes.

16 THE COURT: Now, you've heard the term
17 "evidence" used over and over during the course of
18 trial. I will now explain to you what evidence is and
19 give you some rules to help you in considering the
20 evidence in this matter.

21 As you have already seen, criminal cases are
22 started by charges in an indictment. An indictment is
23 just a piece of paper that accuses someone of a crime,
24 it's not evidence, it doesn't prove anything.

25 Rather, the evidence you must consider is the

Charge

1 testimony of the witnesses and any stipulations that
2 were made during the trial by counsel and, of course,
3 as well as any exhibits which I have allowed into
4 evidence.

5 Can I please have some water?

6 COURT OFFICER: Sure.

7 THE COURT: Testimony which I struck from the
8 record, or exhibits which were marked for identification
9 but which I did not allow into evidence, are not
10 evidence. Questions alone are not evidence. It is the
11 questions together with the answer that constitutes
12 evidence.

13 Of course, you must each follow the solemn
14 oath or affirmation you took to completely ignore
15 prejudice and sympathy in arriving at your verdict.

16 Go over all of the evidence, including the
17 testimony of each witness, and decide whether you
18 believe all or part or none of the witness's testimony
19 and decide how important it is.

20 Now, the People rely on two kinds of evidence
21 to support their position that the defendant's guilty
22 beyond a reasonable doubt.

23 The two types of evidence are direct evidence
24 and circumstantial evidence.

25 In this case the People contend that there

Charge

1 is both direct and circumstantial evidence of the
2 defendant's guilt. Let me explain what constitutes
3 direct and circumstantial evidence and how they
4 differ.

5 Direct evidence is evidence of a fact based
6 upon a witness's personal knowledge or observation of
7 that fact. A person's guilt of a charged crime may be
8 proven if, standing alone, that evidence satisfies a
9 jury beyond a reasonable doubt of the defendant's guilt
10 of that crime.

11 Circumstantial evidence is direct evidence of
12 a fact from which a person may reasonably infer the
13 existence or nonexistence of another fact.

14 A person's guilt of a charged crime may be
15 proven by circumstantial evidence, if that evidence,
16 while not directly establishing guilt, gives rise to an
17 inference of guilt beyond a reasonable doubt.

18 Now let me give you an example of the
19 difference between direct evidence and circumstantial
20 evidence.

21 Suppose that in a trial one of the parties is
22 trying to prove that it was raining on a certain
23 morning. A witness testifies that on that morning she
24 walked into the subway, and as she walked she saw rain
25 falling, she felt it striking her face, she heard it

Charge

1 splashing on the sidewalk. That is testimony of the
2 witness's perception and that would be direct evidence
3 that it rained on that morning.

4 Suppose, on the other hand, the witness
5 testified that it was clear as she walked into the
6 subway, that she went into the subway, got on the train
7 and that while she was on the train she saw passengers
8 come in at one station after another carrying wet
9 umbrellas and wearing wet clothes and raincoats. That
10 testimony constitutes direct evidence of what the
11 witness observed, and because an inference that it was
12 raining in the area would flow naturally, reasonably and
13 logically from that direct evidence, the witness's
14 testimony constitutes circumstantial evidence that it
15 was raining in the area.

16 The law draws no distinction between
17 circumstantial evidence and direct evidence in terms of
18 weight or importance. Either type of evidence may be
19 enough to establish guilt beyond a reasonable doubt,
20 depending on the facts of the case as the jury finds
21 them to be. Because circumstantial evidence requires
22 the drawing of inferences, I will explain the process
23 involved in analyzing that evidence, what you must do
24 before you may return a verdict of guilty based on
25 circumstantial evidence.

Charge

1 Initially you must decide, on the basis of all
2 the evidence, what facts, if any, have been proven. Any
3 facts upon which an inference of guilt can be drawn must
4 be proven beyond a reasonable doubt. After you have
5 determined what facts, if any, have been proved beyond a
6 reasonable doubt, then you must decide what inferences,
7 if any, can be drawn from those facts.

8 Before you may draw an inference of guilt,
9 however, that inference must be the only one that can be
10 fairly and reasonably drawn from the facts. It must be
11 consistent with the proven facts and it must flow
12 naturally, reasonably and logically from them.

13 Again, it must appear that the inference of
14 guilt is not only one that can fairly and reasonably be
15 drawn from the facts and that the evidence excludes
16 beyond a reasonable doubt every reasonable hypothesis of
17 innocence. If there is a reasonable hypothesis from the
18 proven facts consistent with the defendant's innocence,
19 then you must find the defendant not guilty. If the
20 only reasonable inference you find is that the defendant
21 is guilty of the charged crime and that inference is
22 established beyond a reasonable doubt, then you must
23 find the defendant guilty of that crime.

24 Now, there's evidence in this case that the
25 defendant, Atara Wisdom, took the cellphone, wallet and

Charge

1 keys belonging to Anthony Wilson when she left his
2 apartment. She has not been charged with any crime
3 relating to these items. That evidence was not offered,
4 and it must not be considered, for the purpose of
5 proving defendant had a propensity or predisposition to
6 commit the crime charged in this case. It was offered
7 as evidence for your consideration to complete the
8 narrative of what happened on the night of the incident.
9 If you find the evidence believable, you may consider it
10 for that limited purpose and for none other.

11 You will recall that the attorneys stipulated
12 and agreed to certain facts during the course of the
13 trial. The attorneys' three stipulations means there is
14 no dispute as to the facts that were read into the
15 record and upon which both attorneys agreed.

16 You may consider these stipulated facts along
17 with all the evidence other in the case and give such
18 facts the weight you deem to be appropriate under the
19 circumstances.

20 Since you are the exclusive judges of the
21 facts in this case you have a duty to evaluate the
22 testimony of the various witnesses. It is your duty to
23 sort out the credible evidence and disregard any
24 testimony which is not credible. In doing that you
25 should use your common sense, as you do every day of

Charge

1 your life. In doing that you should ask yourselves
2 certain questions:

3 Could the witness see or hear clearly at the
4 time?

5 How accurate is the witness's memory?

6 What was the witness's mental and physical
7 condition at the time these events occurred?

8 Was the witness's ability to see, hear or
9 remember affected by intoxication or otherwise?

10 You should consider the witness's demeanor at
11 the time he or she testified.

12 What was the conduct of the witness upon the
13 stand or the attitude of the witness while testifying?

14 Did the witness answer the questions
15 forthrightly and directly, or did the witness seek to
16 avoid answering any of the questions asked?

17 Did the witness have any bias or prejudice or
18 other reason to be untruthful?

19 In determining the credibility of any witness
20 and the weight to be given by you to his or her
21 testimony, you may consider the interest of the witness
22 in the outcome of the trial. Did the witness have a
23 stake in the outcome or result of the trial?

24 A witness is an interested witness when, by
25 reason of relationship, friendship, antagonism, or

Charge

1 prejudice, in favor of or against one party or the
2 other, his or her testimony, in your judgment, is in
3 fact biased, or likely biased, toward the side or party
4 he or she favors. If you find that any witness is an
5 interested witness, you should consider such interest in
6 determining the believability of the testimony and
7 weight to be given to it.

8 There is no legal presumption that an
9 interested witness is untruthful. There is no legal
10 presumption that a disinterested witness tells the
11 truth. How believable is the witness's testimony in
12 light of all the evidence? Does the witness's testimony
13 make sense to you when tested against your common sense,
14 everyday experience?

15 If any witness has deliberately lied about any
16 material fact, you may ignore all of that witness's
17 testimony, or you may ignore the part that was false and
18 accept the part that was true.

19 It is the convincing quality of the evidence
20 that controls, not the amount of testimony or the number
21 of witnesses that testify for either side.

22 When there are any inconsistencies in the
23 testimony of a witness, or between one witness and
24 another, you must reconcile them, if you honestly can,
25 because often persons seeing the same facts at the same

Charge

1 time may not be able to describe them in the same
2 manner.

3 Were the inconsistencies substantial or were
4 they the kind of minor inconsistencies that one might
5 expect under the circumstances?

6 You are not to reject arbitrarily the
7 testimony of any witness. You should consider the
8 testimony of every witness carefully and determine
9 whether you will accept or reject it in whole or in
10 part.

11 Now, with respect to the credibility of a
12 witness's testimony, there was testimony that Atara
13 Wisdom, after she allegedly committed this crime or
14 allegedly -- I'm sorry.

15 You may consider the testimony regarding Atara
16 Wisdom's outcry after she stabbed the victim. In this
17 case you may consider whether the defendant, Atara
18 Wisdom, complained of the crime promptly or within a
19 reasonable period of time after its alleged commission,
20 the crime being that she was -- that there was an
21 attempt to either rape her or -- attempt to rape her,
22 all right.

23 If you find that the complaint was made
24 promptly, within a reasonable time, you may consider
25 whether, and to what extent, if any, that fact tends to

Charge

1 support the believability of her statements, defendant's
2 statements. If you find the complaint was unreasonably
3 delayed, you may consider whether, and to what extent,
4 if any, that fact tends not to support the believability
5 of defendant's statements.

6 In determining whether a complaint was made
7 within a reasonable period of time you may consider
8 such circumstances as the defendant's age, past
9 experiences and mental state, whether or not the
10 defendant feared for her own safety or safety of others,
11 whether or not the defendant had an opportunity to make
12 a complaint, and any other circumstance that operated to
13 prevent or delayed disclosure within a reasonable period
14 of time.

15 Now, there has been testimony in this trial
16 that the witness, Matthew Shepard, had been previously
17 convicted of certain crimes and that he committed bad
18 acts. Our law provides that, while a person who has
19 been convicted of a crime or committed a bad act is
20 nevertheless a competent witness, such conviction or bad
21 act may be shown for the purpose of affecting the
22 credibility of his testimony. You may, therefore, take
23 such conviction or convictions into consideration as a
24 factor in determining the believability of such
25 witness's testimony.

Charge

1 Now, you will recall that certain police
2 officers testified in this case. You should use the
3 same tests in evaluating their testimony as you would in
4 evaluating the testimony of any other witness. In other
5 words, the mere fact that a witness is a police officer
6 does not require that his or her testimony be given any
7 greater or lesser believability than that of any other
8 witness.

9 You will recall that certain witnesses gave
10 testimony concerning their qualifications as experts in
11 their particular field of expertise.

12 Where scientific, technical or other
13 specialized knowledge will assist a jury to understand
14 the evidence or determine a fact in issue, our law
15 permits a witness qualified as an expert by knowledge,
16 skill, experience, training or education to state his or
17 her opinion on questions in controversy in the trial,
18 for the information of the Court and jury.

19 Please understand that the opinions stated by
20 such expert who testified were based on particular facts
21 as the expert observed them, or as the attorney who
22 questioned that expert asked such expert to assume.

23 To assist you in deciding any question in
24 controversy at trial, you may consider the opinion of
25 any expert, together with the reasons given for such

Charge

1 opinion, if any. You may also consider the
2 qualifications and credibility of such expert.

3 You may reject an expert's opinion if you find
4 the facts to be different from those which served as a
5 basis for his or her opinion. You may also reject an
6 expert's opinion if, after careful consideration of all
7 the evidence in the case, expert and otherwise, you
8 disagree with the expert's opinion. In other words, you
9 and you alone are to form your own opinion or draw your
10 own conclusions as to any question in controversy in
11 this case.

12 As I said, all of you bring your life
13 experience to this case, and so long as you follow my
14 instructions on the law, you may rely upon those life
15 experiences as an aid in your deliberations. However,
16 when I spoke of life experience, I was referring to the
17 types of common experiences that we all as adults have
18 had in the course of our lifetimes and in our day-to-day
19 dealings with others.

20 Some you may have life experience which,
21 because of your chosen profession, includes particular
22 knowledge of specialized subjects that are not normally
23 within the life experience of most people. For example,
24 a doctor or nurse may have particular knowledge of
25 certain medical subjects, or an attorney or law

Charge

1 enforcement officer may have life experience in legal or
2 criminal matters. I instruct you that this type of life
3 experience and knowledge, the type of experience that is
4 not common to most people, but is part and parcel of a
5 particular profession or occupation, cannot enter into
6 your deliberations and verdict in this case. Jurors who
7 possess facts and/or opinions concerning subjects that
8 are not within the normal life experience of the average
9 person may not share those facts and/or opinions with
10 other jurors, nor should the other jurors consider those
11 facts and/or opinions in the course of their
12 deliberations.

13 Now we come to the second part of my charge
14 in which I will analyze the charge in the indictment,
15 I will instruct you with respect to the material legal
16 principles applicable to the crime which this defendant
17 is charged, and briefly explain the application of
18 the law to the facts, all of which will be submitted
19 for your consideration and upon which you will be
20 required to deliberate and render your verdict as to
21 the guilt or non-guilt of the defendant. I do not
22 intend to marshal the evidence or refer to it to any
23 greater extent than is necessary for such explanation,
24 all right.

25 With respect to the only count of the

Charge

1 indictment, charging Murder in the Second Degree, that
2 is the only count that you are to consider in this case,
3 one of the elements that the People must prove beyond a
4 reasonable doubt is that the defendant was not
5 justified. The defendant is not required to prove that
6 she was justified, the People must prove that she was
7 not.

8 I will now explain when, under our law, a
9 person is justified in using deadly physical force to
10 prevent or terminate a forcible rape.

11 Under our law, a person may use deadly
12 physical force upon another individual when she
13 reasonably believes such to be necessary to prevent or
14 terminate the commission or attempted commission of
15 forcible rape.

16 Some of the terms used in this definition have
17 their own special meaning in our law. I will now give
18 you the meaning of the following terms: "Forcible
19 rape," "deadly physical force," and "reasonably
20 believes."

21 A person commits forcible rape when that
22 person engages in sexual intercourse with another person
23 by forcible compulsion.

24 "Forcible compulsion" means to compel by
25 either the use of physical force or a threat, expressed

Charge

1 or implied, which places a person in fear of immediate
2 death or physical injury to herself.

3 "Physical injury" means impairment of physical
4 condition or substantial pain.

5 "Deadly physical force" means physical force
6 which, under the circumstances in which it is used, is
7 readily capable of causing death or other serious
8 physical injury.

9 "Serious physical injury" means physical
10 injury which creates a substantial risk of death, or
11 which causes death or serious and protracted
12 disfigurement, protracted impairment of health, or
13 protracted loss or impairment of the function of any
14 bodily organ.

15 A defendant reasonably believes that deadly
16 physical force to be necessary to prevent or terminate
17 what she reasonably believes to be the commission or
18 attempted commission of a forcible rape by another
19 individual when the two -- when the following two
20 circumstances exist:

21 First, the defendant actually believes that
22 another individual is committing or attempting to commit
23 a forcible rape, and also actually believes that her use
24 of deadly physical force is necessary to prevent or
25 terminate the commission or attempted commission of that

Charge

1 forcible rape. It does not matter whether those beliefs
2 are mistaken, provided the defendant actually holds
3 them.

4 Second, a reasonable person in the defendant's
5 position, knowing what the defendant knows and being in
6 the same circumstances, would also hold those same
7 beliefs.

8 That's the definition of reasonable person.

9 The People are required to prove beyond a
10 reasonable doubt that the defendant was not justified.
11 It's thus an element of Murder in the Second Degree that
12 the defendant was not justified. As a result, if you
13 find that the People have failed to prove beyond a
14 reasonable doubt that the defendant was not justified,
15 then you must find the defendant not guilty of Murder in
16 the Second Degree.

17 Under our law, a person is guilty of Murder in
18 the Second Degree when, with the intent to cause the
19 death of another person, she causes the death of such
20 person.

21 "Intent" means conscious objective or purpose.
22 Thus, a person acts with intent to cause the death of
23 another when that person's conscious objective or
24 purpose is to cause the death of another.

25 In other words, "intent" does not require

Charge

1 advance planning, nor is it necessary that the intent be
2 in a person's mind for any particular period of time.
3 The intent can be formed, and need only exist, at the
4 very moment the person engages in prohibited conduct or
5 acts to cause the prohibited result, and not at any
6 earlier time.

7 The question naturally arises as to how to
8 determine whether or not a defendant had the intent
9 required for the commission of a crime.

10 To make that determination in this case, you
11 must decide if the required intent can be inferred
12 beyond a reasonable doubt from the proven facts. In
13 doing so, you may consider the person's conduct and all
14 of the circumstances surrounding that conduct, including
15 but not limited to the following:

16 What, if anything, did the person do or say?

17 What result, if any, followed the person's
18 conduct?

19 And, was that result the natural, necessary
20 and probable consequence of that conduct?

21 Therefore, in this case, from the facts you
22 find to have been proven, decide whether or not you
23 can infer beyond a reasonable doubt that the defendant
24 had the intent required for the commission of this
25 crime.

Charge

1 In order for you to find the defendant guilty
2 of Murder in the Second Degree, the People are required
3 to prove, from all the evidence in the case, beyond a
4 reasonable doubt, the following three elements:

5 One, that on or about and between November
6 29th, 2011, and January 3rd, 2012, in the County of
7 Kings, the defendant, Atara Wisdom, caused the death of
8 Anthony Wilson by stabbing him with a knife.

9 And, two, that the defendant did so with the
10 intent to cause the death of Anthony Wilson.

11 And, three, Defendant was not justified.

12 Now, let me explain motive.

13 You have heard the term "intent" and I have
14 explained what "intent" is. Now let me explain "motive"
15 because you heard the term "motive" used during the
16 course of this trial, in particular the difference
17 between motive and intent.

18 "Intent" means, as I have indicated, conscious
19 objective or purpose. Thus, a person commits a criminal
20 act with intent when that person's conscious objective
21 or purpose is to engage in an act which the law forbids
22 or to bring about an unlawful result.

23 "Motive," on the other hand, is the reason why
24 a person choses to engage in criminal conduct.

25 If "intent" is an element of a charged crime,

Charge

1 that element must be proved by the People beyond a
2 reasonable doubt. In this case intent is, as I have
3 explained, an element of the crimes -- of the crime of
4 Murder in the Second Degree.

5 Motive, however, is not an element of the
6 crime charged, therefore the People are not required
7 to prove a motive for the commission of the charged
8 crime. Nevertheless, evidence of a motive or evidence
9 of the lack of a motive may be considered by the
10 jury.

11 For example, if you find from the evidence
12 that defendant had a motive to commit the crime charged,
13 that is a circumstance you may wish to consider as
14 tending to support a finding of guilt.

15 On the other hand, if the proof establishes
16 that the defendant had no motive to commit the crime
17 charged, that is a circumstance that you may wish to
18 consider as tending to establish that the defendant is
19 not guilty of the crime charged.

20 All right.

21 Can I have some water, please?

22 Now, before I conclude, I must remind you that
23 in a few minutes you will go into the jury room to begin
24 your deliberations on this case. All of you have a duty
25 and obligation to participate in the deliberations,

Charge

1 voice your opinions and listen to the opinions of the
2 other jurors. Under no circumstances may a juror refuse
3 to listen to the opinions of the other jurors and
4 decline to discuss the evidence with fellow jurors. The
5 word "deliberations" means to carefully and thoughtfully
6 consider and discuss the evidence in this case. By
7 implication, the term "deliberations" has an even
8 greater meaning, one that calls for discussion and
9 consideration of the evidence in a civil and respectful
10 manner. I am aware that at times deliberations can
11 become quite intense and emotion rather than careful
12 reasoning, will rear its head up and seek to take
13 control of the deliberations. At those times you must
14 listen to our inner voice and avoid at all costs any
15 personal attacks upon your fellow jurors. Personal
16 attacks and name calling have no place in your
17 deliberations.

18 During the course of your deliberations you
19 should be governed by reason and rational thought.
20 You should make every effort to harmonize the various
21 views expressed by the different jurors and make every
22 effort to come to an agreement which will speak the
23 truth as far as the facts of this case are concerned.
24 However, you have a right, if you believe you are
25 right, to stick to your arguments and your

Charge

1 conclusions.

2 To the best of your ability I ask you to apply
3 common sense and good judgment, be impartial and fair in
4 your judgment. Do not let sympathy or prejudice sway
5 your minds in any way in analyzing the testimony, decide
6 the case on the evidence and under the law as I have
7 given it to you.

8 Your verdict in this case must be unanimous,
9 that is, all twelve of you must unanimously agree. Your
10 verdict will be announced through your foreperson.

11 Your verdict shall be as follows -- there is
12 only one count, as I indicated, that count is a count of
13 Murder in the First Degree (sic).

14 THE CLERK: Second degree.

15 THE COURT: Second degree, I should say.

16 Not guilty or guilty.

17 Whatever your verdict in count one, just
18 report to the Court.

19 So, you are going to make that determination
20 after you go into the jury room.

21 If at time the jury is unable to come to a
22 decision, you're at an impasse, do not tell this Court
23 how you stand, eight to four for not guilty, or eight to
24 four for guilty. I don't want to know numbers, if that
25 should happen, okay.

Charge

1 You also have a right to have all the physical
2 evidence before you, okay.

3 You also have a right to have any portion of
4 any of the witnesses that you heard, a portion of their
5 testimony read back to you. And what you would do if
6 you do want any part of the witnesses' testimony read
7 back, reduce the request to writing, give it to your
8 foreperson and the foreperson will submit it to the
9 Court.

10 If there is a delay in getting, or if there is
11 a delay in retrieving that testimony, please be patient
12 because the Court Reporter will have to go through her
13 notes to find it, okay.

14 If any of you are smokers and you want a
15 smoking break, you can take it. They should be limited
16 so as not to unduly hamper these proceedings. If there
17 is a smoking break taken, then you should cease
18 deliberations and wait until the smoker or smokers
19 return to the jury room deliberation -- I mean to the
20 jury room. Once they return, then you may restart your
21 deliberations.

22 Also, some of you have taken notes during the
23 trial. Jurors may consult their notes during
24 deliberations.

25 Your notes are for your personal use, for the

Charge

1 purpose of refreshing your recollection. I remind
2 everyone that the notes are merely memory aids, and they
3 are not superior to any juror's independent recollection
4 of what took place during the proceedings. Most
5 importantly, they are not a substitute for the official
6 record of the proceedings which is assembled by the
7 Court Reporter.

8 If what you remember about what occurred
9 during the proceedings is different than what you have
10 written in your notes, you should request a readback
11 of the transcript. If there is a difference between
12 your notes and the official transcript of the
13 proceedings, you must rely on the official transcript
14 and not the notes. This rule applies not only to the
15 evidence, but also to any differences that might exist
16 between your notes and the official record of my
17 instructions on the principles of law that govern the
18 case.

19 Those of you who did not take notes should
20 rely on your own recollection of the evidence and my
21 instructions on the law, and must not be swayed by the
22 fact that another juror may have notes indicating that
23 the evidence or Court's charge on the law was different
24 than you recall it.

25 If there is a disagreement about the evidence

Charge

1 or the Court's instruction, you should request a
2 readback of the transcript to resolve the dispute, and
3 you must rely on the official transcript.

4 All right.

5 Now, are there any exceptions, any requests at
6 this time?

7 MR. WALENSKY: No, your Honor.

8 MS. CHU: No, your Honor.

9 THE COURT: Come on up a minute.

10 (Whereupon, a sidebar conference was held off
11 the record.)

12 THE COURT: All right, at this time I am
13 going to ask the jurors, the twelve jurors, to go
14 into the jury room and begin their deliberations, all
15 right.

16 The four alternates are going to remain here.

17 Take the jurors in, please.

18 All right.

19 (Whereupon, the deliberating jurors exited the
20 courtroom.)

21 THE COURT: Madam alternates, gentlemen
22 alternates, at this time I want to take the opportunity
23 to thank you for serving as alternates because you're
24 put in an unenviable position. In other words, you do
25 not get the opportunity that the other twelve jurors

Charge

1 get to deliberate and still you did the same job and
2 you still followed the Court's instructions and you
3 did your duty as jurors, and you're commended for
4 that.

5 Additionally, your experience in this matter
6 is yours and yours alone. You need not share it with
7 anyone. If the attorneys or anyone else comes to ask
8 you about a matter, that rests within your discretion
9 as to whether or not you want to speak to them, all
10 right.

11 And on a final note, I want to personally
12 thank all of you for serving in the capacity that you
13 did serve.

14 And additionally, I want to wish you all good
15 health and good fortune for the remaining months of this
16 years and your years.

17 Thank you very much. You are excused.

18 (Whereupon, the alternate jurors exited the
19 courtroom.)

20 THE COURT: Do I have a stipulation by and
21 between the attorneys, should the jurors request any
22 of the physical evidence in this case, that it be
23 submitted in the absence of the attorneys and the
24 defendant?

25 MS. CHU: Yes.

Proceeding

1 MR. WALENSKY: Yes.

2 THE COURT: All right. If they wish to have
3 the video played --

4 MS. CHU: Or the 911, we will do so in court.

5 THE COURT: It will be played in court.

6 All right, I'll let them deliberate till 5:30.

7 Okay.

8 MR. WALENSKY: Thank you, your Honor.

9 (Whereupon, the jury deliberations continued.)

10 THE CLERK: Case back on trial continues.

11 All parties present, defendant is present with her
12 attorney.

13 THE COURT: All right, get the jury out.

14 (Whereupon, there was a brief pause in the
15 proceedings.)

16 THE COURT: Bring the jury in, please.

17 COURT OFFICER: Jury entering.

18 (Whereupon, the Jury entered the courtroom.)

19 THE CLERK: All jurors are present and
20 properly seated.

21 Do both parties waive the roll call?

22 MS. CHU: So waived.

23 MR. WALENSKY: Yes.

24 THE CLERK: Thank you.

25 THE COURT: All right. I have a note from the

Proceeding

1 jury: We are approaching 5:00 P.M. The jury would like
2 to know if there is a definite end time -- I was not
3 going to keep them beyond 5:30 -- or if deliberations
4 would last till we reach a decision.

5 As indicated just now, I wasn't going to
6 keep you beyond 5:30 because it has been a long, long
7 day.

8 We request to resume deliberations until
9 tomorrow morning because we are not -- we were not made
10 aware we might be needed past 5:30 P.M.

11 All right. You know what, at this time I'm
12 going to permit you to separate and return home but you
13 must be here tomorrow at 9:30 in the jury room. I don't
14 want anybody to come late. If you come late, I am only
15 going to keep you later.

16 I mean, this morning I know a number of people
17 came late and I know we have been delayed a couple of
18 times, but I've had other matters.

19 So, you have to be here at 9:30, all right.
20 So once all of you are here, then you will resume your
21 deliberations. So be here at 9:30, all right. Leave
22 home, whatever, make sure you have enough time to get
23 here on time, all right.

24 Remember, you are not to discuss this case
25 with anyone outside of the jury deliberations. You are

Proceeding

1 not to resort to utilizing any digital devices for the
2 purpose of obtaining any information regarding this
3 matter or contacting anyone about this matter, and you
4 are to avoid reading any newspaper or listening to any
5 media reports of this matter, if they should be
6 reported.

7 You are not to conduct any individual
8 investigation into the facts in this case nor are you to
9 make any attempt to visit the location. If anyone
10 should attempt to interfere with you in any way, report
11 that matter to myself or one of the Court Officers
12 immediately.

13 Also, remember that you are not to discuss
14 this case with your fellow jurors outside of the jury
15 deliberation room, so cease all discussions until you
16 return to the deliberation room tomorrow at 9:30 A.M.

17 Furthermore, you shall not resume your
18 deliberations tomorrow until you have been specifically
19 instructed to do so by the Court Officer. So once
20 you're all there, he will instruct you to continue with
21 your deliberations.

22 So have a very good night and see you tomorrow
23 morning at 9:30, all right. Leave your books.

24 Thank you.

25 (Whereupon, the Jury exited the courtroom.)

Proceeding

1 THE COURT: Let the record reflect that
2 although I did not read this note prior to the jury
3 entering the courtroom, that the attorneys were aware of
4 the content of the note.

5 Is that correct?

6 MR. WALENSKY: Yes, your Honor.

7 MS. CHU: Yes.

8 THE COURT: So, that's noted for the record.

9 And leave contact numbers with the Clerk and
10 if they request -- if there is any request, we'll
11 contact you. All right.

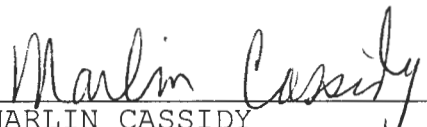
12 Have a good evening.

13 Thank you.

14 MS. CHU: Have a good evening.

15 (Whereupon, the trial was adjourned to July
16 10, 2014.)

17 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
18 THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
19 PROCEEDING.

20
21 
22 MARLIN CASSIDY
23 Senior Court Reporter
24
25

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART 2

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 ATARA WISDOM,

6 Defendant.

Indictment No.:
6615/2012
(Trial)

7 Supreme Courthouse
8 320 Jay Street
9 Brooklyn, New York 11201
July 10, 2014

10 B E F O R E:

11 THE HONORABLE ALBERT TOMEI, JUSTICE
12 (And a Jury)

13 A P P E A R A N C E S:

14 HON. KENNETH P. THOMPSON, ESQ.
15 District Attorney - Kings County
16 350 Jay Street
17 Brooklyn, New York 11201
BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

18 DAVID WALENSKY, ESQ.
19 Attorney for Defendant
20 910 Stuart Avenue
21 Mamaroneck, New York
BY: DAVID WALENSKY, ESQ.
- and -
JOSHUA POVILL, ESQ.

22
23
24 MARLIN CASSIDY
25 Senior Court Reporter

Proceeding

1 (Whereupon, the following took place in open
2 court:)

3 THE CLERK: This is calendar number one, case
4 on trial, Indictment 6615 of 2012, People versus Atara
5 Wisdom. Defendant's incarcerated, produced before the
6 Court, present with her attorney.

7 Appearances are the same.

8 THE COURT: All right. I have a number of
9 notes from the jury. This one is -- it's 10:00 A.M.,
10 10:07 A.M. We would like to see evidence 52 and 53.
11 We'd also like to see 50 and 51.

12 THE CLERK: That was given.

13 THE COURT: That was given, good.

14 There's another one, another note at 10:35.
15 We need the phone board with Anthony Wilson's phone
16 records.

17 THE CLERK: That was given.

18 THE COURT: Records for (347) 793-1940. We
19 need to see pictures, Exhibits 2 through 42. Atara
20 Wisdom's interview eleven o'clock. Can we have written
21 statement from Detective Scandole signed by Atara
22 Wisdom. Also, can we view the video interview.

23 Is the written statement in evidence?

24 MS. CHU: Yes.

25 THE COURT: Was that given to them?

Proceeding

1 THE CLERK: When you were coming down they
2 wrote that, so I'm not sure.

3 THE COURT: All right. So we'll give it to
4 them. If it's in evidence, you can give it to them.
5 Also, can we view the video.

6 COURT OFFICER: You want the jury now?

7 THE COURT: Yes.

8 MS. CHU: I'm all set up with the video.

9 THE COURT: Bring the jury out.

10 (Whereupon, there was a brief pause in the
11 proceedings.)

12 THE COURT: Bring the jury in.

13 COURT OFFICER: Jury entering.

14 (Whereupon, the Jury entered the courtroom.)

15 THE CLERK: All members of the jury are
16 present and seated.

17 Both sides waive the roll call?

18 MS. CHU: So waived.

19 MR. WALENSKY: Yes.

20 THE COURT: I have a number of notes from the
21 jury. First note: We would like to see evidence 52 and
22 53. We'd also like to see 50 and 51.

23 I believe they have been submitted.

24 Also another note, we need the phone board
25 with Anthony Wilson's phone records for (347) 793-1940.

Proceeding

1 We need to see picture Exhibits 2 through 42. We need
2 to see Atara Wilson's (sic) interview.

3 And the last note is: Can we have the written
4 statement from Detective Scandole signed by Atara Wilson
5 (sic).

6 That will be submitted to you.

7 And also, can we view the video interview.

8 We'll play the video for you.

9 (Whereupon, the video was played in open
10 court.)

11 THE COURT: Okay.

12 Lights, please.

13 All right, ladies and gentlemen, you may
14 resume your deliberations.

15 And the written statement will be submitted to
16 you.

17 (Whereupon, the Jury exited the courtroom.)

18 THE COURT: All right. Okay.

19 (Whereupon, the jury continued deliberating.)

20 (Whereupon, a lunch recess was held.)

21 * * *

22 A F T E R N O O N S E S S I O N

23 * * *

24 THE CLERK: Case back on trial continues. All
25 parties present, defendant is present with her

Proceeding

1 attorneys.

2 THE COURT: The jury has a verdict. We will
3 line up the jury.

4 (Whereupon, there was a brief pause in the
5 proceedings.)

6 THE COURT: Bring the jury in.

7 COURT OFFICER: Jury entering.

8 (Whereupon, the Jury entered the courtroom.)

9 THE CLERK: Okay. All the jurors are present
10 and seated.

11 Both sides waive the roll call?

12 MS. CHU: So waived.

13 MR. WALENSKY: Yes.

14 THE CLERK: Thank you.

15 THE COURT: Take the verdict.

16 THE CLERK: Will the Foreperson please rise.

17 In the matter of the People of the State of
18 New York against Atara Wisdom, has the jury agreed upon
19 a unanimous verdict?

20 JURY FOREPERSON: Guilty.

21 THE CLERK: Well, has the jury agreed upon a
22 unanimous verdict?

23 JURY FOREPERSON: Yes.

24 THE CLERK: Count one charging Murder in the
25 Second Degree, what is your verdict?

Proceeding

1 JURY FOREPERSON: Guilty.

2 THE CLERK: Please be seated.

3 Members of the jury, please hear your verdict
4 as it stands recorded. You said you find the defendant,
5 Atara Wisdom, guilty of count one charging Murder in the
6 Second Degree. Is that what your verdict is and so say
7 you all?

8 (Whereupon, the jurors responded.)

9 THE CLERK: Members of the jury, please answer
10 the following question: Is the verdict announced by
11 your Foreperson your verdict in all respects?

12 Juror number one, is that your verdict?

13 JUROR NO. 1: Yes.

14 THE CLERK: Juror number two, is that your
15 verdict?

16 JUROR NO. 2: Yes.

17 THE CLERK: Juror number three, is that your
18 verdict?

19 JUROR NO. 3: Yes.

20 THE CLERK: Juror number four, is that your
21 verdict?

22 JUROR NO. 4: Yes.

23 THE CLERK: Juror number five, is that your
24 verdict?

25 JUROR NO. 5: Yes.

Proceeding

1 THE CLERK: Juror number six, is that your
2 verdict?

3 JUROR NO. 6: Yes.

4 THE CLERK: Juror number seven, is that your
5 verdict?

6 JUROR NO. 7: Yes.

7 THE CLERK: Juror number eight, is that your
8 verdict?

9 JUROR NO. 8: Yes.

10 THE CLERK: Juror number nine, is that your
11 verdict?

12 JUROR NO. 9: Yes.

13 THE CLERK: Juror number ten, is that your
14 verdict?

15 JUROR NO. 10: Yes.

16 THE CLERK: Juror number eleven, is that your
17 verdict?

18 JUROR NO. 11: Yes.

19 THE CLERK: Juror number twelve, is that your
20 verdict?

21 JUROR NO. 12: Yes.

22 THE CLERK: All jurors being polled answer the
23 verdict as their own.

24 THE COURT: You reserve motions at this time,
25 counsel?

Proceeding

1 MR. WALENSKY: Yes, your Honor.

2 THE COURT: What's the sentencing date?

3 THE CLERK: You usually dismiss the jury.

4 THE COURT: Ladies and gentlemen of the jury,
5 I'm sorry, I want to take this time to thank each and
6 every one of you for serving on this matter, serving in
7 the way you did. I noticed all of you were very
8 attentive and you all complied with your obligation as a
9 juror. This was not the easiest matter to be on or to
10 decide, so you have the thanks of the Court and everyone
11 involved in the criminal justice system.

12 Your experience in this matter is yours and
13 yours alone. If the attorneys come and ask to speak
14 with you, or anyone else, it rests within your
15 discretion whether you speak to them or not.

16 Additionally, on a more personal note, I'd
17 like to wish all of you good health and good fortune the
18 remaining months of the year and the rest of your years.

19 Thank you very much. You are excused.

20 JUROR: Thank you.

21 (Whereupon, the Jury exited the courtroom.)

22 THE COURT: All right, you reserve your
23 motions, defense?

24 MR. WALENSKY: Yes, your Honor. I believe I
25 am going to present a 330 motion.

Proceeding

1 THE COURT: Give me a date. When are you
2 going to do that?

3 MR. WALENSKY: I'd like a month to get it
4 because I am going away for a couple of weeks.

5 THE COURT: Why don't we put this over to
6 September, then.

7 MR. WALENSKY: That is fine.

8 THE COURT: All right.

9 MR. WALENSKY: Yes, thank you very much.

10 THE CLERK: Monday, 9/9, Tuesday --

11 MR. WALENSKY: Let me just check.

12 THE CLERK: That is good, Ms. Chu?

13 MS. CHU: That is fine.

14 THE CLERK: September 9th for sentence.

15 THE COURT: Okay.

16 Remand continued.

17 THE CLERK: Part 2 is adjourned.

18 COURT OFFICER: Step out, please.

19 (Whereupon, the trial was concluded.)

20 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
21 THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
22 PROCEEDING.

22

23

24

25

Marlin Cassidy
MARLIN CASSIDY
Senior Court Reporter ✓

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CRIMINAL TERM: PART 2

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, X Indictment No:
6615/2012

5 - against - X

6 ATARA WISDOM, X

7 Defendant. X

8 - - - - -X

9 September 9, 2014
10 320 Jay Street
Brooklyn, New York 11201

11 B E F O R E: THE HONORABLE ALBERT TOMEI,
Supreme Court Justice

12 A P P E A R A N C E S:

13 FOR THE PEOPLE:
14 KENNETH P. THOMPSON, ESQ.
District Attorney - Kings County
15 350 Jay Street
Brooklyn, New York 11201
16 BY: PHYLLIS CHU, ESQ.

17 FOR THE DEFENDANT:
18 DAVID WALENSKY, ESQ.
910 Stuart Avenue
19 Mamaroneck, New York

20

21

22

23 SCOTT ISAACS,
24 Official Court Reporter

25

Proceedings

1 THE CLERK: This is calendar number two off the
2 sentence calendar, indictment 6615 of 2012, People versus
3 Atara Wisdom. The defendant is incarcerated, not produced
4 before the Court.

5 MR. WALENSKY: David Walensky, 910 Stuart Avenue,
6 Mamaroneck, for Ms. Wisdom.

7 MS. CHU: From the Office of the District
8 Attorney, Phyllis Chu. Good morning.

9 MR. WALENSKY: Your Honor, there are two things.
10 I was requesting a 390 examination of Ms. Wisdom.
11 She's refused two probation interviews. She has a
12 significant psychiatric history. I had in fact wanted to
13 do a psychiatric offense, and she was adamant against it.
14 I believe I erred frankly.

15 Additionally, I was ill for quite a bit of this
16 summer. I wasn't able to write up this 330. I'm
17 requesting I be given until October 6th to write up a 330
18 and have it submitted by that date.

19 THE COURT: When are you going to get it in?

20 MR. WALENSKY: I'm going to get it in by
21 October 6th -- prior to October 6th.

22 THE COURT: Why so late?

23 MR. WALENSKY: I need at least two weeks. I just
24 wasn't able to write.

25 THE COURT: I'm a little confused. What are you

Proceedings

1 going to do exactly?

2 MR. WALENSKY: I'm going to complete the 330
3 motion, that will take me to October 6th. I mean I will
4 submit it on October 6th.

5 THE COURT: For me to consider?

6 MR. WALENSKY: Yes. And I'm requesting a 390 to
7 see if she is capable of being sentenced. This was --

8 THE COURT: That's in aid of sentence?

9 MR. WALENSKY: In aid of sentence, yes, Your
10 Honor.

11 THE COURT: It's post conviction; right?

12 MR. WALENSKY: 390 is post conviction, yes, an
13 aid of sentence. It's similar --

14 MS. CHU: It's similar to a 730.

15 MR. WALENSKY: But it's post conviction.

16 If I felt that during trial, I would have asked
17 for a 730. Now it's a 390.

18 THE COURT: Do you have any objection, Ms. Chu?

19 MS. CHU: No, I leave it to the Court's
20 discretion.

21 THE COURT: October 6th.

22 MR. WALENSKY: Thank you, very much.

23 THE CLERK: Is that the adjourned date,
24 October 6th?

25 MR. WALENSKY: No, the adjourned date I guess

Proceedings

1 would be November 6th or November 7th.

2 MS. CHU: Your Honor, we are talking about you
3 are giving him four weeks to write his motion?

4 MR. WALENSKY: No, it's --

5 MS. CHU: If you are ordering a 390, that takes
6 about 30 days. Get your papers within two weeks.

7 MR. WALENSKY: I will try to get it in by Monday
8 the 30th, but I'm taking into account the high holy days
9 and I won't be working for several days.

10 We have a return date of 11/6, Your Honor?

11 THE COURT: That's a lot of time.

12 MR. WALENSKY: I will get it in by the
13 30th then?

14 MS. CHU: If you can get a date in October, that
15 would be preferable. Before the week of the 20th would
16 work for me.

17 THE COURT: Give me a date.

18 MS. CHU: The 15th, 16th, 17th, any of
19 those days is fine with me.

20 THE COURT: What's the 15th or 16th?

21 MS. CHU: A Wednesday.

22 THE COURT: October what?

23 MS. CHU: 15th.

24 THE COURT: All right. October 15th.

25 THE CLERK: Is the adjourned date?

Proceedings

1 THE COURT: Yes.

2 THE CLERK: 10/15.

3 MS. CHU: Would be on for decision and 390?

4 MR. WALENSKY: Yes, 390 psychiatric. They will
5 bring her in. What they do is they bring her in and she's
6 interviewed generally here.

7 THE COURT: All right. October 15th.

8 * * * * *

9 CERTIFIED TO BE A TRUE AND ACCURATE
10 TRANSCRIPT.

11 
12 SCOTT ISAACS,
13 Official Court Reporter
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS : CRIMINAL TERM : PART 2

- - - - -X

THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT NO.
6615/2012

- against - :

ATARA WISDOM :

DEFENDANT : CALENDAR CALL

- - - - -X

320 JAY STREET
BROOKLYN, NEW YORK 11201

OCTOBER 7, 2014

BEFORE: HONORABLE ALBERT TOMEI,
JUSTICE

APPEARANCES:

KENNETH P. THOMPSON, ESQ.
District Attorney, Kings County
BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

DAVID WALENSKY, ESQ.
Attorney for Defendant

LAUREN K. GANZMAN
SENIOR COURT REPORTER

PROCEEDINGS

2

1 THE CLERK: This is calendar number one off the
2 sentence calendar, Indictment 6615 of 2012, People versus
3 Atara Wisdom. Defendant is incarcerated, not produced
4 before the Court.

5 Appearances, for the record.

6 MR. WALENSKY: David Walensky, for Ms. Wisdom.

7 MS. CHU: For the Office of the District
8 Attorney, Phyllis Chu.

9 Good morning.

10 THE COURT: Let the record reflect that the
11 defendant has refused to come out for sentencing and the
12 Court has ordered -- the Court has signed a force order to
13 have her produced in court. Consequently, preparations
14 have to be made to effectuate the order and we're going to
15 adjourn this to tomorrow at 12:30.

16 Thank you very much.

17 MS. CHU: Thank you.

18 THE CLERK: Part 2 is adjourned.

19 THE COURT: And if it's not 12:30, it will be
20 two o'clock tomorrow. Thank you very much.

21 * * * * *

22 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE MINUTES
23 TAKEN IN THE ABOVE-TITLED PROCEEDING.

24 
25 LAUREN K. GANZMAN
SENIOR COURT REPORTER

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS, PART: 2

3 -----
4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-

6 ATARA WISDOM

7 (DEFENDANT)

8 -----
9 DATED: October 8, 2014

10 IND # 06615/2012

11
12 BEFORE THE HONORABLE ALBERT TOMEI, JSC

13 APPEARANCES:

14
15 FOR THE PLAINTIFF:

16 BY: MR. PHYLIS CHU, ESQ.

17 (Assistant District Attorney)

18
19 FOR THE DEFENDANT:

20 BY: MR. DAVID WALENSKY, ESQ.

21
22
23 MICHAEL RIZZO
24 SENIOR COURT REPORTER
25

PROCEEDINGS

1 THE CLERK: Part Two now in session. Honorable
2 Albert Tomei presiding. Calendar Number One off the
3 sentencing calendar, 6615 of 2012, people versus Atara
4 Wisdom. This matter is on for sentence. The defendant is
5 incarcerated and produced before the court.

6 Appearances for the record.

7 MR. WALENSKY: David Walensky for Wisdom Atara.

8 MS. CHU: For the Office of the District
9 Attorney Phyllis Chu. Good afternoon.

10 THE COURT: Good afternoon. Ms. Wisdom, do you
11 feel a little better?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. For the record, yesterday we
14 had adjourned the matter to today. And during the course of
15 yesterday's events I had entertained the motion of Counsel,
16 the post conviction motion the 330.30 and denied the motion
17 by Counsel to vacate the conviction. And the decision and
18 order was submitted to Counsel.

19 MR. WALENSKY: Yes, it was, Your Honor. Note
20 my exception.

21 THE COURT: Mr. Wisdom, I know that you filed a
22 motion claiming that there was ineffectiveness of Counsel.
23 However, you cannot file a motion for ineffectiveness of
24 Counsel pursuant to 330.30. That motion has to be filed with
25 the Appellate Division or you can file a 440.10 motion which

PROCEEDINGS

1 if you are assigned counsel post conviction and an attorney
2 will make that judgement for you, okay.

3 THE DEFENDANT: Okay.

4 THE COURT: All right. Now is there any legal
5 reason why the Defendant should not be sentenced at this
6 time?

7 MS. CHU: No.

8 MR. WALENSKY: No.

9 THE COURT: Okay.

10 THE DEFENDANT: Could I address the Court for a
11 second, please?

12 THE COURT: Yes. What is it?

13 THE DEFENDANT: I had put in a motion for my
14 transcripts and it is not being spoken on. I don't
15 understand why. I would like my transcripts from my trial.

16 MR. WALENSKY: Transcripts are submitted back
17 to The Court. These are 18 B. I have to submit them at
18 which time -- So the Appellate Attorney can get them. The
19 Appellate Attorney or The Court will supply them to Ms.
20 Wisdom. But prior to that they would have to be purchased
21 because the reporters have to be paid for those Francis
22 script is. So, essentially again with the appeal, she can
23 ask herb appellate attorney for those transcript is. And
24 they will be supplied to her. I have to turn them?.

25 THE COURT: Who does she ask?

PROCEEDINGS

1 MR. WALENSKY: She sent in a request as a poor
2 person for the trial transcript. But it is premature because
3 they have to be submitted to the Court first. And that once
4 they are with the Court, she -- they could entertain that
5 request and they initially go to her appellate attorney.

6 THE DEFENDANT: Okay. Okay.

7 THE COURT: You are filing a notice of appeal;
8 is that correct?

9 MR. WALENSKY: I will file a notice of appeal
10 for her. She could -- she will actually need to file one
11 because even though I ask an attorney be provided in my
12 notice of appeal, the Appellate Division is stating that the
13 defendants themselves have to also request an attorney. I
14 will preserve her right regarding that. But she should file
15 a notice to 30 Monroe Place.

16 THE COURT: Okay.

17 THE DEFENDANT: Could I address the Court
18 again, please?

19 THE COURT: What else?

20 THE DEFENDANT: I asked Mr. Walensky on
21 multiple occasions for my paperwork. That has not happened.
22 I don't understand why. Because we were at the end of my
23 trial. We are at sentencing and I don't have my paperwork
24 which is a violation of my 14th Amendment. But if it is, you
25 know, I mean, I guess that is --

PROCEEDINGS

1 MR. WALENSKY: Her entire original file was
2 turned over. There are transcripts of the recordings that
3 were made during trial because she can't have the DVDs. But
4 the transcripts are there. I retained the DVDs of the 911
5 call and of her statement. Some of the paperwork, some of the
6 paperwork, some of the papers requested, were just given to
7 me at trial. That is the record of the card which is part of
8 my 330 motion.

9 The statements who Mathew Shephard (phonetic
10 spelling) was because Ms. Clue (phonetic spelling) had stated
11 she would tell me who the witness was, but I couldn't --
12 though Ms. Wisdom knew him, I couldn't turn it over to Ms.
13 Wisdom yet. It was protected information up to the time of
14 trial.

15 As an officer of the Court, I had to keep the
16 confidence. I had the statement but no identity of Mathew
17 Shephard. The entire file is with her parents. I gave them
18 instructions for mailing them to Ms. Wisdom. I also told
19 them to make copies so if something happened to them.

20 One of the problems at Rikers, when there are
21 security checks officers take and throw out all of the
22 papers. This happens time and time again.

23 THE COURT: So, the paperwork work was turned
24 over to them?

25 MR. WALENSKY: The entire original file.

PROCEEDINGS

1 THE COURT: Do you wish to be heard, Ms. Chu?

2 MS. CHU: Yes. I know this trial took place a
3 couple of months ago. It was in July of this year that we
4 received the verdict. However, having presided over the
5 trial I know you are fully familiar with the facts and
6 circumstances of the case that on November 29, 2011, the
7 Defendant stabbed Anthony Wilson seven times inside of his
8 home at 832 Bushwick Avenue. She took his phone, his keys
9 and his wallet. She locked up the apartment. And she left.

10 She contacted a person by the name of Mathew
11 Shephard, help Shard. She gave third party admissions to Mr.
12 Shephard that she wouldn't pay rent to Mr. Wilson and fuck
13 him so she poked him.

14 It was not until five weeks after that that Mr.
15 Bilson's body was discovered partially decomposed by his
16 landlord when he failed to pick up his mail from his
17 mailbox. This Defendant since, she was apprehended, has
18 failed to be truthful with regard to both the method of how
19 she stabbed the Defendant and the motive for why she stabbed
20 him.

21 She said -- she made statements to the police
22 as well as to the D.A.'s Office about how the Defendant was
23 -- the victim was trying to rape her and, therefore, she
24 had to defend herself.

25 However, the evidence that was adduced during

PROCEEDINGS

1 the course of this trial did not support her version of
2 events. In fact, it contradicted her version of events. The
3 evidence at the scene, as well as the injuries that were
4 suffered by the victim, as well as the 911 call on November
5 29, 2011, claiming there was a girl in his house acting crazy
6 and he wanted her out.

7 The 911 tape evidences that this Defendant has
8 extremely violent anger issues and is a danger to society.
9 And for those reasons, The People are asking that the Court
10 sentence her to the maximum allowable under the law. That is
11 25 years to life.

12 THE COURT: Do you have somebody that plans to
13 speak?

14 MS. CHU: Yes, Mr. Wilson's daughter Shaquana
15 Stewart-Wilson would like to make a statement to The Court.

16 MR. WALENSKY: May I be seated?

17 THE COURT: Yes you can sit.

18 THE CLERK: State your name.

19 MS. STEWART-WILSON: Shaquanna Stewart-Wilson.
20 I am the second oldest of Anthony Wilson. So, I have a
21 little speech to say.

22 THE COURT: Go ahead.

23 MS. STEWART-WILSON: We are happy that we are
24 able to find out who was responsible for the terrible
25 ability, but at the same time my fear is gone. And he will

PROCEEDINGS

1 never come back. It was also -- he was also kindhearted,
2 caring and also willing to lend a helping hand. Anybody who
3 knew him know he loved to dance. He was too much of a good
4 person to be taken away from us. He didn't deserve to die
5 like that.

6 It is good that we -- I have my family here to
7 help a lending hand and strength and support. On behalf of
8 my grandmother, who chose not to be here, I know he is
9 smiling down because justice has been served on his behalf.

10 THE COURT: Thank you.

11 Counsel.

12 MR. WALENSKY: Yes, Your Honor. I am going to
13 ask for the minimum sentence allowed by law. Your Honor, we
14 were unaware, until the 390 exam --

15 This is a tragedy for everyone. Both families,
16 lost someone. Until the 390 exam I was unaware that Ms.
17 Wisdom had been sexually molested as a child for is a
18 substantial period of time. I was not aware she had fallen
19 and was in a coma for several weeks and when she came out
20 wasn't the same type of person.

21 I was aware there were certain psychiatric
22 issues. This was discussed with her in terms of the defense
23 that would be presented. But I wasn't aware of the extent of
24 these. And certainly not aware of the molestation.

25 Taking these into consideration we could,

PROCEEDINGS

1 perhaps, understand -- well not to Ms. Wisdom but to
2 apparently a jury was an overreaction to the events that
3 transpired.

4 Mr. Wilson was extremely intoxicated, .24
5 alcohol in his blood. Ms. Wisdom had said he attacked her.
6 This was substantiated in terms of when Mathew Shephard
7 testified. She said, yes, I poked him. She also said he had
8 tried to rape her. And she did have a swollen -- swelling on
9 her head around her face which is consistent with being
10 punched. We don't know exactly what happened in that
11 apartment but Anthony Wilson is now deceased.

12 I would like the Court to take into
13 consideration these factors brought out in the 390 Exam in
14 measuring justice with the understanding of a certain -- why
15 a certain person might act out as they are.

16 Ms. Wisdom, to this day, denies that she
17 murdered Mr. Wilson with intent in cold blood and was, in
18 fact, defending herself. Thank you.

19 THE COURT: What is the --

20 The probation reports makes mention of a
21 program.

22 MR. WALENSKY: MICA (phonetic spelling) is a
23 psychiatric probationary program.

24 THE COURT: Ms. Wisdom, do you wish to speak at
25 this time?

PROCEEDINGS

1 THE DEFENDANT: Yes.

2 THE COURT: Go ahead.

3 THE DEFENDANT: Excuse me, if I speak to the
4 family for a few seconds.

5 THE COURT: Quiet.

6 THE DEFENDANT: First off, I want to apologize
7 for your loss. I want to apologize to each and every one of
8 ya'll. Nothing was done intentionally. Yes, Anthony was a
9 good person. And I am never going to try to take that from
10 him. I am never going to try to erase that. I am never
11 going to make it seem like he was a horrible person.

12 I don't think that you guys understand that he
13 was fighting a demon that is way bigger than I think a lot of
14 people can understand. It was not just his habit. It was
15 his emotions. His loneliness. Everything that he has been
16 feeling. I think that has been in order throughout his
17 life.

18 Everybody is entitled to feel what they feel.
19 I am not going to take that from ya'll. I am not going to
20 make it seem like I am not supposed to like feel any type of
21 -- I don't know, like I am not supposed to be punished for
22 whatever, what happened. I never felt right about the whole
23 thing in the first place. I never did. I am not going to
24 feel right. I beat myself up the whole time ever since it
25 happened. I am not happy about the circumstances. I am not

PROCEEDINGS

1 happy about what happened. And know I didn't feel
2 comfortable with anything at all.

3 Like I said, it is nothing that I could replace
4 and give back to you guys. Wish I could, but I can't. I
5 know what a loss is like. I apologize to each and everyone
6 of ya'll separately.

7 And God willing, and God knows in my heart that
8 I never tried to hurt him. I always looked out for Anthony
9 to the best of my ability. And he has done the same thing
10 for me. So, everything right now is being misinterpreted to
11 make it seem like, you know --

12 I guess I really don't exactly know the words
13 to say. I am not a bad person. I am not going to make it
14 seem like -- you know, make everybody anybody feel like I am
15 a bad person because I am not. Things has happened in my
16 life. Things has happened in his life. It ended up being
17 uncontrolling situation that could not have been avoided. I
18 walked away plenty of times. I have. I want ya'll to all
19 know that. I have. I want you to know that. I avoided a
20 lot of things over the course of time. Don't think I did
21 what I did, and did it intentional to make myself feel better
22 or make anybody else feel better or anything like that. It
23 was not like that.

24 I can't replace what was taken from your
25 lives. I wish I could but I can't. I can't. So, only thing

PROCEEDINGS

1 I can say is that I hope God blesses ya'll and God protects
2 ya'll through everything.

3 THE COURT: Thank you.

4 The Court has before it a New York City
5 Department of Probation Report. And it does reflect a prior
6 conviction of the Defendant, bench trial for Attempted
7 Assault and Harassment. I don't know exactly what date that
8 was. Also, the Defendant was convicted of Assault Three in
9 Lower Court. She was sentenced to 15 days and three years
10 probation and had an order of protection.

11 The Defendant made probation. She violated it
12 and was resentenced to nine 90 days in jail. On the
13 Attempted Assault and Harrassment she was sentenced to 30 and
14 15 jail days respectively, and an order of protection.

15 The Department of Probation also notes that the
16 Defendant refused to make a statement and was uncooperative
17 during the course of an attempted interview of the
18 Defendant. It is a fact that the Defendant does suffer from
19 certain mental health issues. And she was being medicated
20 through MICA, a program at Kings County Hospital. However,
21 she reportedly stopped going to the program against medical
22 advice.

23 Taking into consideration all of the facts and
24 circumstances of this matter, and the fact that after trial
25 the Jury found the Defendant guilty of Murder in the Second

PROCEEDINGS

1 Degree, Intentional Murder, The Court hereby sentences the
2 Defendant to 18 years in jail as a determinate sentence -- I
3 mean to say 18 to life. I made a mistake. I am sorry. 18 to
4 life. And that will be the sentence of The Court.

5 THE CLERK: Ms. Wisdom, this is your right to
6 appeal. You are advised that you have the right from the to
7 file a written notice of appeal with the clerk of the court
8 and duplicate within 30 days of this date. Similar notice
9 must be served on the DA of Kings County.

10 If you can not afford or retain Counsel, you
11 may apply to the Appellate Division 2d Department at 45
12 Monroe Place Brooklyn, New York and ask that Counsel be
13 assigned to you for the purpose of prosecuting your appeal.

14 There is a \$300 mandatory surcharge. \$50 DNA
15 fee, \$25 crime victim assistance which they take from inmate
16 funds.

17 THE COURT: You can take charge.
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PROCEEDINGS

REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a true and
accurate transcript recorded by me



Michael Rizzo
Senior Court Reporter